

CRITERIA OF CAPACITY
FOR INDEPENDENCE



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CRITERIA OF CAPACITY FOR INDEPENDENCE

A DISSERTATION SUBMITTED TO THE
FACULTY OF THE DIVISION OF THE
SOCIAL SCIENCES IN CANDIDACY FOR
THE DEGREE OF DOCTOR OF PHILOSOPHY

DEPARTMENT OF POLITICAL SCIENCE

1934

By

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SYRIAN ORPHANAGE PRESS

JERUSALEM

1934

PREFACE

The Mandate system set up under Article 22 of the Covenant of the League of Nations was admittedly temporary in nature and the system itself envisaged an eventual termination of the mandates and the recognition of their independent status. An important feature of the system was the acknowledgment that such a development should be consummated only when the peoples concerned evidenced their ability "to stand by themselves under the strenuous conditions of the modern world." However, nowhere were these conditions defined and no generally accepted criteria of capacity existed by which the course of developments in the mandates might be guided or by which the degree of accomplishment in individual cases might be measured.

The elaboration of definite standards for determining the capacity of the mandated peoples for independence is doubly necessary, first, as an essential step in the termination of a mandatory regime, and secondly, in order to counteract the uncertainty and distrust existing in the minds of the mandated peoples due to the indefinite nature of all references to ultimate independence and in order to make clear the goal toward which their energies should be directed. The present study was initiated in 1927 in the hope of shedding some light upon this difficult problem. It was the intention to make a comparative study of the criteria which had been advanced in various historical instances of political emancipation in the hope of finding criteria of general validity and of political practicability as evidenced by their common usage. In 1931 the Permanent Mandates Commission, after a deductive analysis of the problem, recommended certain general conditions which should be fulfilled before the termination of a Mandate. The standards it adopted were therefore taken as the point of reference for a comparison with the criteria revealed by an inductive analysis of historical precedent and practice.

The study leads to the conclusion that the criteria stated under widely varying circumstances of race, geography, and historical background have been so markedly similar in broad general categories as to warrant the assumption that there are certain fundamental criteria of universal validity. The few exceptions to this general agreement have been so obviously based on political expediency that they only serve to prove the rule, for they constitute exceptions to the general practice of the States concerned.

Obviously the extent to which these criteria can be utilized in the practical determination of the readiness of a given community for independent status depends upon the ability to determine objectively whether these conditions have been fulfilled. Unfortunately, few techniques for quantitative measurement exist in this field. The development of such techniques remains a problem for the ingenuity of statistical researchers. In the meantime, it is hoped that a clarification of the criteria involved may facilitate a more objective determination of the capacity for independence.

In the execution of this study the author is indebted to Professor Quincy Wright and the Faculty of the Department of Political Science of the University of Chicago for valuable criticism and assistance and also to his wife for invaluable help in proof-reading and indexing and for innumerable sacrifices of personal convenience during the period of study.

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January, 1934.

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CHAPTER I

INTRODUCTION

With all the current discussion of the mandatory system there has been surprisingly little attention given to the problem of a procedure for the attainment of its ultimate objective, namely the termination of mandatory status and the achievement of independence and admission to the League of Nations. Certainly one of the principal advantages anticipated in the working of this new system was the possibility of an orderly and peaceful progression from a state of external control to eventual independence.

It would seem to be implicit in the mandate system that this transition from subjection to independence is to take place in accordance with new principles. Independence is to be won not by military prowess but by evidence of "ability to stand alone."¹ That force alone is not deemed sufficient evidence of such capacity was amply demonstrated when the whole moral force of the League was marshalled behind a mandatory Power attempting to suppress an armed uprising against its authority.² At the same time, these events made clear that if this transition was to take place without recourse to violence, some positive standards must be set up and some definite techniques of measurement elaborated, as well as some machinery to insure that the whole operation is not held in abeyance until political expediency or the good will of the mandatory dictates. Unless the standards are sufficiently definite and the procedure reasonably objective and automatic, the aspiring nation is only too likely to seize the first favorable opportunity to force the issue by a resort to violence. Thus the successful working of this system demands the establishment of a satisfactory set of standards or criteria of a capacity for independence together with a procedure for setting the machinery of appraisal in motion by an automatic or at least impartial agency.

In the past the principal criterion of a capacity for independence appears to have been the ability to foment such forces of violence and potential insurrection as to make the cost of maintaining political control greater than the controlling power could bear. The

¹ See Article 22 of the Covenant of the League of Nations.

² *Minutes of the Permanent Mandates Commission*, VIII, *passim* (in reference to the Syrian uprising in 1925—26). Future footnote references to the Minutes of the Commission will be abbreviated as follows: *P.M.C.*, *Min.*

real question has been, not whether the subject people were able to stand alone, but whether the efforts necessary for keeping them in subjection conformed to the policy of the superior state. Wherever possible the nationalistic demands have been placated with concessions of local autonomy and administrative reorganizations and the evil day of final settlement postponed.¹ The criterion of force seems to have been a primary consideration in the development of modern Europe, as was recently exemplified in the formation of Poland, Czechoslovakia, and the Baltic States. And yet, while able to prevent direct external interference, force alone has not been able to secure immediate recognition and admission to full participation in international relationships, as is shown by Manchoukuo and Nejd.

On the other hand, as evidence that force is not the only criterion of such capacity, we find numerous examples of small states, both old and new, whose independent status is not questioned in spite of the fact that their military power is insignificant and that none of them could long resist determined aggression on the part of powerful neighbors. While an examination of their cases may shed some light on other evidences of capacity than force, the record of their admission to the Family of Nations is not likely to show any objective standards against which they were measured, but rather that political expediency and international rivalry prompted their sponsors.

In initiating the mandatory system, Article 22 of the Covenant was silent as to the criteria or procedure of its termination. It did, however, clearly state, as the justification for the external control of the mandates, that they are "inhabited by peoples not yet able to stand by themselves under the strenuous conditions of the modern world." The corollary of this statement would seem to be that when they are "able to stand by themselves" they should be released from such tutelage as is imposed by the mandatory system. Furthermore, these areas are differentiated into A, B and C mandates on the basis of alleged varying degrees of capacity. But what is the measuring stick by which this differentiation has been made? By what criteria of a capacity for independence have they been measured and found deficient? Right here lies the fundamental weakness of the mandatory system, just as it is the weak point in the relations between Great Britain and India, or the United States and the Philippines. There are no such standards; there is no yardstick for objective measurement; there is nothing to guarantee that the

¹ See QUINCY WRIGHT, *Mandates under the League of Nations* (Chicago: Univ. of Chicago Press, 1930), chap. i, and FREDERICK L. SCHUMAN, *International Politics* (New York: McGraw-Hill Book Co.), 1933, chap. xv, especially pp. 622-39.

determination of eventual readiness for independence will be decided on any more objective evidence than was the determination of a present lack of it.¹ Here lies the source of much of the discontent and unrest which characterizes all such territories. It lies in the uncertainty as to the future, the oft-expressed conviction that, no matter how much progress may be made, the goal will never be achieved, because, due to the lack of clearly defined standards, the requirements will purposely be raised whenever achievement is in sight. If it is possible to classify the mandates into A, B, and C mandates upon the basis of their relative fulfillment of the conditions necessary for the recognition of their independence, it should be possible to define those conditions in unmistakable terms so that any independent and impartial body could measure the achievements of a given people as against those criteria and arrive at approximately the same result. If it is possible to deny that a people are "able to stand by themselves under the strenuous conditions of the modern world," it should also be possible to define clearly the degree of attainment which is necessary in order to evidence an ability to stand alone.

In the case of the Philippines we have one of the few instances where the promise of eventual independence has been made contingent upon the attainment of a pre-determined goal. According to the preamble to the Jones Act, this goal shall be the ability to maintain a stable government.² At first glance this seems somewhat of an advance over the vague requirement of "ability to stand by themselves." However, that the definition of a stable government is none too clear is amply demonstrated by the interpretations of this phrase offered by the executive branch of the government which has declared that this stable government should be able to defend itself against aggression in an imperialistic world, should be based on democratic principles, and should respect its obligations under the present capitalistic system of the Western world.³ One has only to turn to the arguments of congressional leaders, and other equally competent authorities, to see what havoc is played by the lack of clearly defined standards. One man is concerned primarily with the disposition of our naval forces, the necessity for a naval base, the defense of Hawaii and the Pacific Coast. A second is concerned mainly with the effect of independence upon the sugar

¹ SCHUMAN, *op. cit.*, p. 630.

² "Act of August 29, 1916," *U. S. Compiled Statutes* (1918), pp. 575-93.

³ See President COOLIDGE's veto on April 6, 1927, of Philippine bill proposing reform referendum on question of independence; also, report of CARMEL M. THOMPSON, *Senate Document 180*, 69th Congress, 2nd Session.

industry, a third with its effect upon missionary movements, a fourth with possible repercussions in the British and Dutch Pacific possessions, and finally one, and perhaps the most influential one, is thinking entirely in terms of vote-getting possibilities with reference to coming elections. Many of these items will be found to bear upon the wisdom of granting independence in a particular case, but they are not criteria of the specific problem of capacity therefore.

A situation more nearly approximating that facing the Mandates Commission occurs in the application of states seeking admission to the League of Nations. But even here we find the Committee on Admissions is not concerned exclusively nor even primarily with evidence of the ability of the applicant to stand alone but rather with the political implications of its total situation as possibly affecting the League and problems of world peace, although the existence of a stable independent government and the ability to fulfill international obligations have been important factors in its decisions. Nevertheless, an analysis of the evidence accepted in support of the contention that these criteria are fulfilled, as will be shown in succeeding chapters, indicates that they have little more precision of meaning and objectivity than are contained in the vague statements of Article 22 of the Covenant or the "stable government" provisions of the Jones Act.

In the early years of its existence the Permanent Mandates Commission was too busy with current problems to consider the question of termination of a mandatory regime, a question which seemed at that time of remote significance. The first warning came with the promise of Great Britain in the Iraq Treaty of 1926 to consider the possibility of recommending Iraq for admission to the League in four years. The warning was renewed in 1928 with the conditional pledge of recommendation for 1932 and when, in 1929, this pledge was made unconditionally, the question was definitely brought to the fore. Thereupon, the Council, by resolution of January 13, 1930, made the following communication to the Commission:

Being anxious to determine what general conditions must be fulfilled before the mandate regime can be brought to an end in respect of a country placed under that regime, and with a view to such decisions as it may be called upon to make on this matter, the Council, subject to any other enquiries it may think necessary, requests the Mandates Commission to submit any suggestions that may assist the Council in coming to a conclusion.¹

¹ *P. M. C., Min., XVIII, 170.*

This subject was accordingly placed upon the agenda of the Commission for its next two sessions and various procedures were suggested for dealing with the problem. There seems to have been considerable divergence of opinion on the proper procedure and even on the Commission's competence to deal with various aspects of the problem. One gains the impression that the Commission was somewhat embarrassed by having the question raised at that time, and that there existed a general attitude of incredulity at the possibility of such a situation having been achieved in such a short time. One might even detect a slight feeling of exasperation with the Mandatory Power for forcing the issue, and a suggestion that the Mandatory should beware of giving way to political pressure rather than face undesirable consequences! The Commission's embarrassment arose from the fact that it takes its responsibilities in all seriousness and it realized that it was faced with a problem which required the most careful study and yet it was forced to act under pressure of time and with only its ordinary limited rules of procedure.¹ Basing its discussion on special reports by three of its members, the Commission devoted a brief part of its nineteenth and twentieth sessions to the consideration of this problem. The discussion was far more penetrating and thorough than the time devoted to it might seem to indicate and it raised aspects of the general question which are not indicated in its formal conclusions as presented to the Council. The findings of the Commission were:

The Mandates Commission is of opinion that the emancipation of a territory under the mandate regime should be made dependent on two classes of preliminary conditions:

- 1) The existence in the territory concerned of *de facto* conditions which justify the presumption that the country has reached the stage of development at which a people has become able, in the words of Article 22 of the Covenant, 'to stand by itself under the strenuous conditions of the modern world';
- 2) *Certain guarantees* to be furnished by the territory desirous of emancipation to the satisfaction of the League of Nations, in whose name the mandate was conferred and has been exercised by the Mandatory.

Whether a people which has hitherto been under tutelage has become fit to stand alone without the advice and assistance of a mandatory is a question of fact and not of principle. It can only be settled by careful observation of the political, social and economic development of each territory.

¹ For example, it cannot investigate conditions at first hand, it cannot call in its own witnesses, it cannot even exercise an unrestricted right of asking questions. (See HOCKING, *The Spirit of World Politics*, pp. 310-30.)

This observation must be continued over a sufficient period for the conclusions to be drawn that the spirit of civic responsibility and social conditions have so far progressed as to enable the essential machinery of a State to operate and to ensure political liberty.

There are, however, certain conditions the presence of which will in any case indicate the ability of a political community to stand alone and maintain its own existence as an independent State.

Subject to these general considerations, the Commission suggests that the following conditions must be fulfilled before a mandated territory can be released from the mandatory regime—conditions which must apply to the whole of the territory and its population:

- a) It must have a settled Government and an administration capable of maintaining the regular operation of essential Government services;
- b) It must be capable of maintaining its territorial integrity and political independence;
- c) It must be able to maintain the public peace throughout the whole territory;
- d) It must have at its disposal adequate financial resources to provide regularly for normal Government requirements;
- e) It must possess laws and a judicial organization which will afford equal and regular justice to all.¹

These terms represent quite an advance over the vague requirement of "ability to stand alone", but they are still a long way from making the goal definite and objective. A mandated people may well ask what constitutes a settled government or an administration capable of maintaining the regular operation of essential government services and what are those services? Or again, against whom must it be able to maintain its political integrity and political independence and to what extent can it rely upon League sanctions and protective alliances? What degree of disorder will be considered evidence of inability to maintain the public peace? What are normal government requirements and what constitutes adequate financial resources to provide them? What is the measure of a system of laws and judicial organization which will afford regular and equal justice to all? Answer these questions and the mandate has a definite goal toward which to direct its efforts; unanswered, the criteria are nearly as indefinite and as liable to subjective interpretation and political manipulation as before their enumeration.

Of course, such criteria may serve a useful function as general guide-posts to an all-wise and competent tribunal, but the Mandates

¹ *P.M.C., Min., XX, 123-24.*

Commission has repeatedly emphasized its incompetence to make a decision on the basis of the evidence at its disposal and in its application of these very criteria to Iraq was forced to the damning conclusion that its recommendation must be based on the fact of no evidence to the contrary rather than on any positive assertion of achievement.¹ Furthermore, any satisfactory set of criteria should fulfill a double purpose, first, of serving as a measuring stick for the Mandatory and the Commission in appraising the degree of achievement, but second, and of equal importance, of serving as a definite goal for the mandated peoples, towards which they might strive with greater confidence in the ultimate result and thus save the tremendous loss from obstructionist propaganda and political intrigue. The British Government has given eloquent testimony to the value of such certainty in smoothing the relations between mandatory and mandate.² While no set of criteria could make definite the date of termination as did the unconditional promise of Great Britain, nevertheless it should remove much of the distrust caused by the uncertainty as to the exact requirements to be demanded and thus make possible a degree of co-operation in their fulfillment such as has not yet been secured under the mandate system.

As to the second category of requirements, the special guarantees to be demanded, the Commission made the following recommendations:

The Commission suggests that the guarantees to be furnished by the new State before the mandate can be brought to an end should take the form of a declaration binding the new State to the League of Nations or of a treaty or a convention or of some instrument formally accepted by the Council of the League as equivalent to such an undertaking.

The Commission suggests that, without prejudice to any supplementary guarantees which might be justified by the special circumstances of certain territories or their recent history, the undertakings of the new State should ensure and guarantee:

- a) The effective protection of racial, linguistic, and religious minorities;
- b) The privileges and immunities of foreigners (in the Near Eastern territories), including consular jurisdiction and protection as formerly practised in the Ottoman Empire in virtue of the capitulations and usages, unless any other arrangement on this subject has been pre-

¹ *Ibid.*, XXI, 222.

² *Special Report to the Council of the League of Nations on the Progress of Iraq during the period 1920-1931*, Colonial 58 (London: H.M. Stationary Office, 1931).

- viously approved by the Council in concert with the Powers concerned;
- c) The interests of foreigners in judicial, civil, and criminal cases, in so far as these are not guaranteed by the capitulations;
 - d) Freedom of conscience and public worship and the free exercise of the religious, educational and medical activities of religious missions of all denominations, subject to such measures as may be indispensable for the maintenance of public order, morality and effective administration;
 - e) The financial obligations regularly assumed by the former mandatory Power;
 - f) Rights of every kind legally acquired under the mandate regime;
 - g) The maintenance in force for their respective durations and subject to the right of denunciation by the parties concerned of the international conventions, both general and special, to which, during the mandate, the mandatory Power acceded on behalf of the mandated territory.

In addition to the foregoing essential clauses, the Permanent Mandates Commission considers that it would be desirable that the new State, if hitherto subject to the Economic Equality Clause, should consent to secure to all States Members of the League of Nations the most-favoured-nation treatment as a transitory measure on condition of reciprocity.¹

Whereas the first set of conditions outlined dealt with the measures of the capacity of a people to govern themselves without external assistance, the second group of guarantees are primarily concerned with the ability of such a people to fulfill their international obligations as a member of the Family of Nations. With one exception, they propose nothing new to international practice but bring together in compact form the various conditions which have been commonly demanded, at least in recent years, of new States, particularly those of eastern Europe and the Orient. The suggested requirement of most-favored-nation treatment by the new State constitutes an exception of questionable validity, to be justified, if at all, by the need for protection from the rapacity of the Powers rather than the backwardness of the mandated area.²

Acting under handicaps of time and procedure, the Mandates Commission has made a notable advance in attacking this whole problem which obviously requires the most careful and detailed analysis and study. It is proposed to carry on in the succeeding chapters a further analysis of the general problem of criteria of

¹ *P. M. C. Min.*, XX, 123-24.

² *Infra*, Chaps. II and VII.

capacity for independence with particular reference to the proposals of the Permanent Mandates Commission. It will be necessary to examine certain fundamental assumptions which underlie the whole problem of criteria, such as the assumption that there can be a single set of standards of universal validity for all states or would-be-States.¹ Aside from the theoretical argument, it is proposed to examine the evidence from history as to whether the arguments offered in support of a demand for independence have been sufficiently common to give practical support to the assumption of universal validity.

In presenting the historical evidence as to the actual arguments advanced with regard to the necessary criteria of a capacity for independence, considerations of space make necessary some limitations. Obviously, independence movements which took place before the existence of generally accepted principles of international law would be of little significance to the present problem. Furthermore, it has seemed desirable to limit the field of observation to those cases which have clearly come within the period of "the strenuous conditions of the modern world." Consequently, the cases presented in the succeeding chapters are historical developments of the period since the industrial revolution and most of them, in fact, are very recent, if not current problems. Two further considerations have guided the selection of material for detailed presentation. In the first place, an attempt has been made to select those countries in which the argument as to capacity for independence has been most fully elaborated and embodied in the historical record. In the second place, the examples have been so chosen as to present the arguments evolved from widely divergent cultural, economic, racial, and religious backgrounds. While innumerable differences might be found in the form and detail of the argument by a wider sampling, it is believed that the cases cited present all the basic arguments advanced in recent history and thus present a fair basis of comparison with the generalized standards set up by the Permanent Mandates Commission.

The first case, that of Iraq, represents the Class A mandates of the Near East and is of particular interest because Iraq is the first of the mandated areas to fulfill the requirements of the criteria elaborated by the Permanent Mandates Commission. The Philippine Islands presents the problem in its more normal setting as a matter of only domestic concern. The argument on both sides has been

¹ Professor HOCKING in *The Spirit of World Politics* (Macmillan, 1932) makes an interesting analysis of this problem.

fully elaborated and reference to American recognition policy also presents the standards advanced in admitting the states of South America to full status in the Family of Nations. India, likewise, presents the colonial problem, with reference to Great Britain this time, thus permitting a comparison of the standards advanced by Great Britain as Mandatory and as an imperial Power. The history of the admission of new members into the League of Nations presents the standards adopted under post-war conditions by the majority of the nations of the world in joint assembly and is of particular interest in relation to the new post-war states of Europe and Asia. The position of Japan with regard to the new State of Manchoukuo is of particular interest because of the acute international situation arising therefrom and the seemingly contradictory conclusions as to Manchoukuo's capacity for independence.

It should be borne in mind that in the presentation of all these cases the purpose has been to present the criteria of capacity which have been accepted as valid by the various elements involved and not to pass judgment upon the political developments which have followed. It is then proposed to submit this material, these alleged criteria, to a detailed analysis for the purpose of eliminating the transient and irrelevant. Many of these items will be found to bear upon the *wisdom* of granting independence in a particular case, but are not criteria of the *capacity to stand alone*, for example, some of the arguments already cited in connection with the Philippine question. Such an objection as that the granting of independence to the Philippines might embarrass Great Britain and Holland by stimulating similar movements in their Pacific possessions has no bearing upon the question whether the Filipinos are capable of maintaining an independent government. Likewise, the necessity for an American naval base in the far Pacific may be one of the factors to be considered before independence is granted, but it is not a criterion of the capacity of the Filipinos. Similarly, the fact that the American sugar industry might be benefited by the independent status of the Philippine Islands is no proof that the people of these islands are able to stand alone. All of these arguments concern interests which may be affected by the granting of independence, but they are not criteria of the capacity of the Islanders for self-government. And yet, in most of the public discussion of this problem, much confusion and misunderstanding of the real issues has resulted from the ease with which the arguments based upon alleged political and economic results of a change of status have been made to appear as determinants of capacity, and, because of

the very lack of standards and techniques for objective measurement, the emphasis has been placed upon an assumed incapacity, since it constituted the most morally justifiable objection to the granting of independence.¹ A clear distinction between the question of capacity and the other factors involved in the consideration of possible independence is certainly essential if the criteria of capacity are to be selected on any objective and scientific basis.

A further distinction must be made between the essential and the non-essential, between those factors which constitute the necessary minimum for responsible independence and those which would make possible a somewhat higher level of political life than is required for independent existence. This issue has been frankly raised by the British High Commissioner for Iraq when he addressed the Mandates Commission:

What is to be the touchstone of independence in this case? Is it to be some absolute standard evolved from abstract principles, or a relative or comparative standard? In either case what is to be that standard? It seems that the framers of the Covenant did not intend that membership should be restricted to those States only which had obtained to a specially high level of cultural and political development. To the framers of the Covenant, at any rate, the criteria would seem to have been that a State should be fully self-governing, should be able to stand alone and should be such as could be relied upon to observe its international engagements There are doubtless features in the administration, in the cultural development and in the conditions of life in Iraq which are open to criticism. It is not suggested that Iraq can challenge comparison with the more highly developed and civilized nations of the modern world. It might never be able to do so, even were mandatory control continued for many years. But is such a comparison either fair or necessary? I submit that it would not be right to attempt to argue that Iraq is not fit to function independently merely because the machinery of government there may not run quite so smoothly or so efficiently as in some more advanced or more highly developed State.²

These sane observations suggest two methods by which to test the essential nature of the criteria proposed. First, to find which criteria are accepted by the leaders of both parties to the controversy as constituting satisfactory criteria. In such cases of unanimity there can be little doubt that they constitute essential

¹ An unusually clear statement of this problem is to be found in DEAN KALAW's article, "Why the Filipinos Expect Independence", *Foreign Affairs*, X (Jan., 1932), No. 2.

² *P.M.C., Min.*, XX, 123-24.

criteria of the capacity for independence. While at first glance one might expect this to be an almost hopeless task, even a superficial study would seem to indicate that there is a larger field of agreement between ruler and ruled as to what constitutes real tests of capacity than might be anticipated. For example, to cite the obvious, there would seem to be no disagreement as to the necessity for a real public opinion within the territory in favor of independent status, though there may be no agreement as to whether it exists. Likewise, there seems to be a consensus of opinion as to the necessity for a government capable of maintaining public security.

On the other hand, there are strong differences of opinion as to the essential nature of some of these alleged criteria. This disagreement may exist not only between the dominant and dependent groups, but between statesmen and leading authorities within the groups themselves. Perhaps one of the best examples is the question as to the extent to which Western forms and standards of government are essential for admission to an independent national existence. Some would go even further and include certain Western, or even Christian, social and moral standards as indispensable. Disagreement is particularly strong over the question of the degree of achievement to be required in terms of any particular criterion. It is proposed to test these alleged criteria by a comparison with existing conditions in the Family of Nations. A standard which is not generally maintained among existing States can scarcely be considered an essential criterion of capacity. Certainly the subject peoples will never willingly accept a set of standards which demand of them a higher level of performance than is expected of present League members. Such problems need careful study in order to separate those factors which have been accepted as necessary qualifications for independence, as evidenced by historical precedent and practice, from those which attempt to set up ideal standards which have not been generally accepted, even by those nations at present constituting the Family of Nations.¹

The concluding chapter will summarize the results of this

¹ There is no question of the legal right of individual States to set conditions for recognition or of the League to set the qualifications for admission to membership, but if such qualifications are to be morally valid and capable of universal application they should represent the standard which, in existing State practice, is generally recognized as the acceptable minimum. It is, of course, to be recognized that a deficiency in terms of such standards in the case of a particular State does not itself prove the invalidity of the standard provided its default does not receive general assent and approval, for once recognition is granted it cannot be retracted and failure to uphold the conditions set for membership in an international organization may not constitute a legal basis for expulsion.

analysis and present those standards which, in the opinion of the writer, have met the requirements as real criteria of the capacity for independence, thus constituting both a goal for the constructive efforts of the mandated peoples and at the same time a measuring rod by which their achievements at any given time may be measured with some degree of objectivity and impartiality.

While the present study does not go beyond the question of the criteria to be established, it is obviously only part of a larger problem requiring further consideration. Once the criteria have been determined, it is necessary to improve the techniques of measurement. So far, such measurement has consisted largely in securing the opinions of those who are supposed to be in a position to know. In its discussion of the situation in Iraq, the Mandates Commission was forced to such a procedure by its lack of first hand information other than that of the Mandatory Power. The Commission merely set up general criteria, it had to rely on the word of the Mandatory as to whether they had been fulfilled. The question may well be raised whether it is in harmony with the spirit of the mandatory system to leave the determination of the readiness of a given area for independence to the decision of the government to whom the mandate has been entrusted. If the system is to win the respect of the people who are governed under it, there is necessity to show that when independence does come it results from the actual attainment of definite objectives, and not merely from the political exigencies of the situation. Is it not just as great a violation of the "sacred trust of civilization" for a Mandatory Power to shake off the burden of its trusteeship before real evidence of ability has been shown as for it to maintain its position of control long after this ability is recognized? With the best of intentions, is it possible for a mandatory Power to make such a momentous decision impartially and fairly? In order that the recommendations of the Mandates Commission may command the respect of all parties, its rules of procedure, for this purpose, should be so broadened as to enable it to be the active agent; its methods must be improved by the development of objective techniques of measurement. In many cases, entirely new techniques might be evolved by specialists approaching the problem as one for scientific research with the sole purpose of finding a measuring instrument of accuracy and objectivity, regardless of what such measurement may show. Even though many of the criteria may not be susceptible of quantitative treatment, certainly all of them can be measured with far greater accuracy and objectivity than is even pretended at the present time.

Given such techniques, it should be possible to set up a yardstick or measuring scale for each of the criteria selected and to measure the attainments of a given people thereon. Just what point on each scale is to be selected as constituting the turning point between capacity and incapacity? Are all the criteria to be weighted equally in arriving at the final conclusion? Is it possible for a deficiency on one scale to be offset by a higher degree of attainment on another? All of these questions are bound to be raised as the range of practical application increases.

Another problem exists in the necessity for some machinery whereby the Mandates Commission may initiate an inquiry in cases where the Mandatory is charged with delaying its recommendations long after the facts of the situation are alleged to warrant revision. Perhaps a still more probable aspect of the same problem is the possibility that the Mandatory, being in control of the situation and perhaps desirous of maintaining its mandatory relationship, may be itself responsible for any lack of progress in the development of self-governing capacity. These are problems with delicate political implications and it is possible that they will be better solved through the force of precedent and public opinion than by the institution of a more powerfully sanctioned machinery of international control and supervision. Nevertheless, if the mandate system is to be more than an improved type of colonial relationship, these problems must be solved.¹

¹ The author has drawn freely from his article in the *American Political Science Review*, February, 1932, entitled, "What Constitutes Readiness for Independence?"

CHAPTER II

CRITERIA IN IRAQ

The independence movement in Iraq is distinctly a product of the World War though its roots go back to the slowly rising tide of Arab nationalism throughout the Near East. An incipient nationalism which had been vaguely stirred by the successes of the Arab Wahabi movement and the agitations of ardent Syrian nationalists was largely counteracted by the Pan-Islamic policy of the Turkish government. Even the resentment against the "Ottomanization" policy of the Young Turks after 1908 failed to arouse any unified movement though it fanned the flames of Arab nationalism in Iraq and paved the way for later developments. However, the occupation by British forces in 1914 and the subsequent campaign against the Turkish forces did not elicit any united support from Iraqi nationalists comparable to that rendered by the Arab forces under Feisal. In fact, many tribes were openly hostile to the British occupation and at no time could the British Command count upon native support or even neutrality. With the close of active military operations against the Turks, the tension between the natives and the British increased, partly because of nationalist fears of the ultimate objectives of British policy, partly from the intrigues of religious leaders of Najaf and Karbala, but largely from the uncertainties and disruption occasioned by any military occupation with its temporary reorganization of administration and its indefinite duration.

Three events occurred toward the end of 1918 which served greatly to stimulate the national spirit and to give it a direction and a degree of unity which had not existed before. This development was described by Miss Gertrude Bell in the following terms:

A new turn was given to the native mind, firstly by the publication in the official Mesopotamian newspapers on October 11, 1918, of President Wilson's Fourteen Points, which, though declared in the Senate on January 8th, were unknown in the Iraq till they appeared in Reuter's telegrams; and secondly, on November 8th, of the Anglo-French declaration which stated that it was the intention of the two Governments to establish among those peoples who had long been oppressed by the Turks "national governments and administrations drawing their authority from the free choice of indigenous populations. . ."

This announcement of a policy in accordance with the

principles on which the war had been waged did little but reiterate the intentions which had already been announced on the occupation of Baghdad, but it differed from the former pronouncement in one important particular, namely, that whereas the Baghdad proclamation had been issued while the upshot of the war was still extremely doubtful, and for that reason had been regarded as mainly a war expedient, the Anglo-French declaration was published after the victory of the Allies had been achieved, and commanded belief. If, previous to its appearance, the people of Mesopotamia had been as a whole content to accept the decision of arms, the declaration opened out other possibilities the nature of which was not clearly understood, nor indeed was it likely to be understood, by the people to whom the declaration was addressed. Some regarded it merely as an indication of the uncertainty of its authors as to the future, and proceeded to canvass any insignificant incident or act on the part of the authorities with a view to discovering whether it might not imply a hidden intention of handing the country back to the Turks, a prospect which was regarded with mixed feelings, but suggested at least the instant need of hedging; others went to the opposite end of the scale and interpreted the expressed wish of the Allies to set up an indigenous government in Mesopotamia as a recognition of the capacity of the Arabs to embark on native administration without assistance or control. In Baghdad, where political ambitions are more highly developed than elsewhere in Mesopotamia, within a week of the publication of the Anglo-French declaration the idea of an Arab Emir of the Iraq was everywhere being discussed, and in Mohammedan circles it met with universal approval. But there was no consensus of opinion as to the person who should be selected to fill the post. At first the choice wavered between a son of the King of Hedjaz, a member of the family of the Sultan of Egypt, and a magnate of Mosul; the Naqib of Baghdad was mentioned, and once a preference for a republic was expressed. But the idea of a republic was not agreeable to most Moslems, and the Naqib showed some reluctance to accept high office of State.

Debate in the town took almost at once a sharply controversial colour, and this was due partly to the fact that a new element had been imported into Baghdad after the Armistice. According to the terms arranged with the Turkish Commander, all men of Arab birth who had been in Ottoman employ, whether civil or military, were permitted to return to their homes. A proportion of these were men who of free choice had accompanied the Turks when they retreated before General Maude's victorious army, and were *ex hypothesi* unlikely to entertain kindly feelings towards the continuance of British control, however liberally it might be exercised.¹

¹ *Review of the Civil Administration of Mesopotamia, 1917-1920* (Baghdad, 1920).

While nationalist hopes were at their height as a result of these two declarations of principle, they received a new impetus from the developments in Syria where an Arab State was in process of formation under the Emir Feisal. A considerable group of Iraqis were officers in Feisal's army and many of them belonged to a revolutionary society, the "Ahd el 'Iraqi," which aimed at establishing the independence of Iraq. Free from British control and relatively unrestrained by Feisal who was preoccupied with his own troubles, this group was in a strategic position to disseminate revolutionary propaganda and organize a general attack upon the British posts. At their instigation the British outpost in Deir-ez-Zor was attacked late in 1919 and shortly thereafter the British found it expedient to evacuate this district, a move which gave the Arabs a false impression of their strength. Early in 1920, two events which took place almost simultaneously greatly increased the discontent in Iraq. The crowning of Feisal at Damascus aroused tremendous excitement throughout the Near East and when this was quickly followed by the definite assignment of the Iraq mandate to Great Britain on April 24, the nationalists saw their fond hopes rudely shattered. The extremists decided the hour for action had come. In the ensuing months sporadic outbreaks occurred, incidents of little moment in themselves but indicative of the state of tension throughout the country. Toward the end of June the Beni Haichem tribe revolted and almost immediately the whole country was in a state of insurrection. The small British garrisons were hard put to even hold their own pending reinforcements from India. The issue was not long in doubt but it was a good six months of strenuous campaigning before order was restored.

In October, 1920, Sir Percy Cox arrived as the first British High Commissioner under the mandate. He found the backbone of the insurrection had been broken but there was still widespread disturbance and unrest. On the seventeenth, he issued a proclamation calling upon the disaffected elements for cooperation in the task of setting up a national government and pointing out that this could not be done as long as various parts of the country were in active opposition. His immediate efforts were directed toward the establishment of a provisional government pending the calling of an elective constitutional assembly and on November 11 the High Commissioner announced the establishment of a Council of State under the presidency of the venerable Naqib of Baghdad.

The Letters of Gertrude Bell covering this period are eloquent testimony of the difficulties encountered in securing even this

degree of cooperation with the representative of the Mandatory Power. Throughout the whole history of the mandate, there was the greatest reluctance on the part of all the nationalist leaders to take any step which might be interpreted as accepting the mandate principle. As Sir Percy Cox pointed out:

It was extraordinary with what aversion the mandatory idea had always been regarded in Iraq. The mere terms "Mandatory" and "Mandate" were anathema to them from the first, for the simple reason, I am convinced, that the words translate badly into Arabic, or rather were wrongly translated in the Arabic press when they first emerged from the Peace Conference. I assume that the term mandatory to have been introduced by its sponsor, President Wilson, in the particular and recognized sense of "one who undertakes to do service for another with regard to property placed in his hands by the other"; "the other" in this case being the League of Nations, while the "Mandate" is the contract under which the service is performed. But it was taken in Iraq in its other sense of "an authoritative requirement, as by a sovereign"; and the "mandatory" as one who exercised the authority. Two widely different conceptions. Misunderstanding their meaning, as they did, there was always intense eagerness on the part of those in authority in Iraq, to get rid of the hated expressions, as defining their relation with us, and much needless controversy was the result.¹

The first task of the provisional government was to determine the constitutional form of the organization which they were to build. In its *Report of Progress* the British Government described the situation in the following terms:

From the first, the Ministers seem to have had no doubt as to what they wanted, nor indeed had any of the politically minded public of the country who were unanimously in favor of a democratic constitutional government. Some desired a republic, others, a large majority, preferred a monarchy, but all wished to be ruled by an elected parliament on the most up-to-date model. Nor was it strange that this should be so for although it cannot be said that any clear idea of the duties and privileges of democratic citizenship had been widely spread among all classes of the people, the enthusiasm for political liberties, which had been kindled by the events of 1908-9, was still dominant among those whose intellectual pre-eminence placed them naturally in a position of influence and authority.²

¹ Lady FLORENCE BELL, *The Letters of Gertrude Bell* (New York, 1927), 11, 535.

² *Special Report to the Council of the League of Nations on the Progress of Iraq during the period 1920-1931* (London, 1931) p. 13.

As a result of this state of affairs, it was decided that the form of the new State should be that of a constitutional monarchy and after considerable negotiation the throne was offered to the Emir Feisal who had but recently been driven by the French from his kingship of the Arab State of Syria. While the choice of Feisal was undoubtedly due, in part, to British influence, there was ample evidence, even before the British preference was generally known, that he was the voluntary choice of important elements in Iraq. On July 11, the Council of State passed a resolution in favor of Feisal provided that his regime should be a constitutional, representative, and democratic one. At the request of the High Commissioner a plebiscite was taken of all the notables of the settled communities and tribes, of whom 96 per cent approved the choice of Feisal, the dissentient 4 per cent consisting mainly of the Turkish and Kurdish elements. On August 23, the Emir Feisal was proclaimed King of Iraq and the provisional government came to an end.

The happy solution of this thorny question did not mean, however, the end of agitation against the mandate. The Report of Progress continues:

Meanwhile public opposition in Iraq to any form of external control was rapidly becoming the most urgent national question of the time. This opposition provoked a dangerous and subversive agitation in many parts of the country and His Majesty's Government realized that unless some means of meeting it could be found it would be necessary for them to face an indefinite prolongation of military control. After careful consideration they arrived at the conclusion that it was preferable that their juridical position in Iraq should be defined not, as had originally been proposed, in the usual mandate form but in the form of a treaty between His Majesty's Government and the Iraqi Government, the provisions of which could satisfy the League that His Majesty's Government were in effect in a position to discharge their Mandatory obligations. It was their intention not that the proposed treaty should replace the Mandate, but rather that the Mandate should be defined and implemented in the form of a treaty

. . . . Negotiations were at once opened for the conclusion of the proposed treaty, but when it was found that this instrument must necessarily contain detailed provisions to enable His Majesty's Government to discharge exactly the same obligations as would have been defined in the Mandate document, King Feisal and the Iraqi Council of Ministers at once expressed the gravest misgivings. They had no objection whatever to concluding a treaty which would define the relations between His Majesty's Government and the Iraqi

Government for a period of 20 years, but they never contemplated that the mandatory regime would necessarily last for the whole of this period. Ultimately it was agreed to relegate the detailed provisions to subsidiary agreements which were to be negotiated later ¹

The Treaty of Alliance was finally signed on October 10, 1922, but during the deliberations thereon a major political crisis had developed which culminated in the High Commissioner himself taking over the direct control of the government. The Ministry had approved the proposed treaty in June on condition that it should be ratified by the Constituent Assembly. A storm of protest broke out under the guidance of various political extremists and of leading Shiah religious leaders, many of whom were of Persian nationality. One of the latter had even issued a decree of excommunication against any who should fail to guard the independence of their country from any foreign control. At the same time a situation of acute unrest existed in several of the provinces. On August 23, when the High Commissioner was paying a congratulatory visit to the palace on the occasion of the King's birthday, he was greeted by an organized hostile demonstration in which members of the King's household were found to have had a part. That evening the King was stricken with appendicitis and the country found itself without King or Cabinet and faced with the possibility of serious disorders. The High Commissioner immediately assumed command until the King's recovery. Various political leaders were deported from Bagdad and certain Shiah divines invited to return to Persia. The most violent newspapers were suppressed and vigorous action taken against the recalcitrant tribes. The country rapidly returned to normal and in September, upon the recovery of the King, a new Cabinet was formed of which the Naqib was again Premier. On October 10 the treaty was signed after assurance had been received from the British Government that it would support Iraq's admission to the League at the earliest possible date, which event would automatically terminate the Mandate. Still the ratification was delayed by the boycotting of the elections for the Constituent Assembly and it was not until Sir Percy had returned from the visit to England in April, 1923, with a new protocol shortening the duration of the treaty to four years that opposition abated sufficiently to enable the calling of the Assembly. The treaty was finally ratified on June 10, 1924. The Assembly then proceeded to the drafting of the Constitution and a new electoral law and the

¹ *Ibid.*, p. 14.

first Parliament under the new regime assembled in July, 1925.

In spite of the fact that the new constitution gave the Iraqis far more autonomy than was enjoyed in any other mandate, their Nationalist aspirations were not satisfied and to a large extent they remained suspicious that the British would find some pretext for delaying the recommendation of independence. This feeling was intensified when the League Commission awarded Mosul to Iraq only on condition that the mandate was to be extended for a period of twenty-five years. A new treaty was therefore necessitated providing for a twenty-five year extension of the mandate but, at the insistence of the Iraq Government, a promise was included on the part of the British Government to consider at the time when the first treaty would have expired under the protocol of 1923 and at subsequent four-year periods whether it was possible to advocate the admission of Iraq to the League, and if this were not possible to revise the subsidiary agreements.

.... In the position in which they were placed by the resolution of the Council regarding the northern frontier of the country, the Iraqi Government had really no option but to agree to the prolongation of their treaty relations with the United Kingdom, but, even in face of the danger of losing Mosul, public opinion would not have accepted such a prolongation without the special limiting provisions which have been described.¹

The new treaty was ratified on July 19, 1926.

When in 1927 the British Government notified the Iraq Government that it could not recommend Iraq for admission to the League in 1928, the High Commissioner made a conditional promise that "provided the present rate of progress was maintained and all went well in the interval" the British Government would recommend such action in 1932. A new treaty embodying this conditional clause was drawn up but never ratified owing to the opposition in Iraq to the conditional clause. Finally, in 1929, on the advice of the new High Commissioner, Sir Gilbert Clayton, which incidentally accorded with that given by his predecessor, Sir Henry Dobbs, in 1927,² the British Government decided to pledge itself unconditionally to

¹ *Ibid.*, pp. 16-17.

² It should, perhaps, be noted that this pronouncement was made under a Labor Government, the policy of which has been traditionally less imperialistic than that of the Conservative Party. However, it seems clear that this step was merely a logical development of the policy which had been consistently held by all British Governments from the Cairo Conference of 1920. Sir Henry Dobbs had advocated this step in 1926, at which time it had been opposed because of its seeming contradiction with the findings of the Mosul Commission.

recommend Iraq for admission to the League in 1932. In the words of the *Special Report*,

The disappearance of the objectionable proviso and the certain knowledge that the candidature of Iraq for admission to the League in 1932 would be supported by His Majesty's Government removed much of the uncertainty regarding the future which had beset the minds of Iraqi politicians and went far to restore their confidence in British intentions . . . so far as the relations between the two governments were concerned the position was greatly eased.¹

Negotiations immediately commenced for the drafting of a treaty which should determine the relations of the two countries after the termination of the mandate. These negotiations proceeded on the basis of the proposals for an Anglo-Egyptian settlement published in 1929. The principal provisions of the new treaty were for mutual assistance in case of war and for two bases in Iraq for the British air force. In the annex provision was made for the maintenance of British forces in two different areas for a period of five years pending the building up of suitable Iraqi forces. After the signature of the new Treaty of Alliance, the Iraqi Parliament was dissolved and a new election held on the issue of the new treaty. The treaty was ratified by the new Parliament on January 29, 1931, by a vote of 11 to 5 in the Senate and 69 to 13 in the Chamber. In January, 1930, the British Government notified the Council of the League of its intention to recommend Iraq for admission to the League of Nations in 1932. In support of this recommendation the British Government prepared a Special Report on the Progress of Iraq from 1920 to 1931 for submission to the Permanent Mandates Commission. After careful consideration of this report and frankly influenced by the opinion of the Mandatory Power, the Permanent Mandates Commission gave its approval to the emancipation of Iraq on condition that the latter furnished the necessary guarantees in the form of a Declaration to the Council. By its Declaration to the Council of May 19, 1932, the Iraq Government offered the necessary guarantees and on the third of October Iraq was admitted to membership in the League of Nations.

Once having adopted a policy of "the progressive establishment of an independent Government of Iraq, friendly to and bound by gratitude and obligation to His Britannic Majesty's Government"²

¹ *Special Report*, pp. 19-20.

² *Report on the Administration of Iraq for the year 1927*, (London, 1927), p. 11.

the British Government was rapidly forced to interpret its policy in terms of concrete procedures and standards. Arab nationalism was constantly pressing for a definition of the standards which must be met before Iraq would be recommended for admission to the League, while the Permanent Mandates Commission was concerned as to the evidence of accomplishment which would justify such a recommendation. While the broad lines of policy were laid down in various proclamations and declarations, their interpretation and definition must be deduced from the concrete results in the administration of the mandate and from the mass of evidence of accomplishment presented to the League in the voluminous *Special Report of Progress on the Development of Iraq during the period from 1920—1931*.

The main lines of the British position were laid down in 1922 when Mr. Winston Churchill, then Secretary of State for the Colonies, made the following statement:

His Majesty's Government, conscious of the deep obligations into which they entered towards Iraq, are convinced that these obligations will be completely fulfilled by means of the treaty of alliance which has been signed on behalf of His Britannic Majesty and of His Majesty the King of Iraq. They will do everything to speed delimitation of the frontiers of Iraq, in order that Iraq may be in a position, when the treaty and the subsidiary agreements therein provided for have been duly ratified and the organic law has been brought into effect, to apply for admission to membership of the League of Nations.

They confidently look forward to this application being made as soon as the frontiers are settled and a stable Government set up in accordance with the organic law, when they will use their good offices, provided that effect is being given to the provisions of the treaty, to secure the admission of Iraq to membership of the League, as provided for in Article 6 thereof, which affords, in their opinion, the sole means by which mandatory relations can legally be terminated.¹

The declaration of these two principles of settled frontiers and a stable government, in the words of Sir Henry Dobbs, "formed the foundation of the claims of Iraq to an early advance to complete independence." He continued:

There was probably no one in Iraq who did not anticipate that by the summer 1923 Iraq would be a member of the League, mandatory relations between her and Great Britain would have ceased, the Turkish menace would have dis-

¹ SIR HENRY DOBBS, "Relations between Britain and Iraq," *The Empire Review*, L, 177.

appeared, and she would forthwith enter on a period of peaceful development as a completely independent State, with the friendly support of the British Empire.¹

An examination of subsequent declarations of the British Government, however, reveals other criteria of capacity and a more explicit interpretation of the stable government provision. In the *Special Report* and in the explanation of the accredited representative before the Mandates Commission the British Government made clear both the direction and the degree of attainment necessary for Iraq to be recommended for admission to the League.

Briefly summarised, the aim which His Majesty's Government have set before themselves has been the establishment at the earliest possible date of a fully independent State of Iraq inspired with the spirit of the League of Nations, animated by a sincere desire to observe its international obligations, and ready to accept not only the privileges but also the responsibilities involved in accession to the Covenant . . . but they have never regarded the attainment of an ideal standard of administrative efficiency and stability as a necessary condition either of the termination of the Mandatory regime or of the admission of Iraq to membership of the League of Nations. Nor has it been their conception that Iraq should from the first be able to challenge comparison with the most highly developed and civilized nations of the modern world. What they have aimed at is the setting up within fixed frontiers, of a self-governing State enjoying friendly relations with neighboring States and equipped with stable legislative, judicial, and administrative systems and all the working machinery of a civilized government . . .²

Sir Francis Humphrys further elaborated this concept in his declaration before the Commission:

In approaching this problem the question at once presents itself of what is the test to be applied to Iraq.

What is to be the touchstone of independence in this case? Is it to be some absolute standard evolved from abstract principles, or a relative or comparative standard? In either case what is to be that standard? . . . I venture to think that the wording of the Covenant and the consideration of what appears to have been in the minds of those who drew up that instrument, might afford some measure of guidance . . .

Article 22 of the Covenant speaks of States "which are inhabited by peoples not yet able to stand by themselves . . ." Later, referring, *inter alia*, to Iraq, it speaks of communities "which have reached a stage of development where their

¹ *Ibid.*

² *Special Report*, pp. 10-11.

existence as independent nations can be provisionally recognized." From Article 1 of the Covenant it seems that the principal qualification for membership of the League is that a State should be "fully self-governing" and should give "effective guarantees of its sincere intention to observe its international obligations." It seems therefore that the framers of the Covenant did not intend that membership should be restricted to those States only which had attained to a specially high level of cultural and political development. To the framers of the Covenant, at any rate, the criteria would seem to have been that a State should be fully self-governing, should be able to stand alone, and should be such as could be relied upon to observe its international engagements.

Again, the primary consideration which governed the application of the mandatory system would appear to have been not perfection, or imperfection, but ability or inability to stand alone. The framers of the Covenant do not seem to have asked themselves whether the system of public administration or the political methods of this or that State were of a satisfactory standard. No, the test applied seems to have been whether the State in question could stand alone and could govern itself without external assistance.

Now Iraq is admittedly not free from imperfections. There are doubtless features in the administration, in the cultural development and in the conditions of life in Iraq which are open to criticism. It is not suggested that Iraq can challenge comparison with the more highly developed and civilized nations of the modern world. It might never do so, even were mandatory control continued for many years. But is such a comparison either fair or necessary?

Similarly, I submit that it would not be right to attempt to argue that Iraq is not fit to function independently merely because the machinery of government there may not run quite so smoothly or so efficiently as in some more advanced or more highly developed State. As my Government has attempted to show in the special report, the Iraqi State, given the support and inspiration of membership in the League, is now fit to stand alone: it is now capable of self-government, indeed, for all practical purposes it is already governing itself; it has shown itself jealous of the sanctity of international engagements. I submit, that in those circumstances, there is no longer justification for continuance of mandatory control, and that to grant Iraq independence and the opportunity for progress and development offered by admission to the League would be in full accord with the spirit of the Covenant and the high ideals with which the founders of the League were inspired.¹

These declarations add to the requirements of settled frontiers

¹ *Permanent Mandates Commission Minutes*, XX, 123-24.

and a stable government the prerequisite of "a sincere intention to fulfill its international obligations." Further than that they give a partial explanation of what is meant by "stable legislative, judicial and administrative systems and all the working machinery of a civilized government." But perhaps even more important is the assertion that the British Government "had never regarded the attainment of an ideal standard of administrative efficiency and stability as a necessary condition either of the termination of the mandatory regime or of the admission of Iraq to membership of the League of Nations," a statement which the Mandates Commission accepted "without reservation."¹

While a definite commitment as to the general criteria such as have been enumerated above is important, the real essence of the problem lies in their interpretation, in the determination of what constitutes settled frontiers, or a stable government, or a sincere intention to fulfill international obligations. Here the evidence is less clear, but may be deduced from the special argument before the Mandates Commission and the evidence presented in support thereof. While no clear-cut list of criteria is presented, there is at least a summary of the concrete achievements which have been considered sufficient to warrant the recommendation of independence for Iraq.

One of the first factors advanced in the *Special Report* as evidence of capacity is that of a strong public opinion in favor of independence. The history of the mandatory regime in Iraq gave repeated evidence that such a desire existed and the British Government has not only frankly recognized the existence of such an opinion but has indicated it as one of the criteria of a capacity for independence. The *Special Report* reads:

Throughout the period under review a definite political impulse is evident behind all these changes. On the part of all responsible Iraqis there has been from the first a marked impatience of mandatory control and a fervent desire for independence. These are to be ascribed, not to ingratitude nor to lack of appreciation of the efforts of the Mandatory and the League of Nations on behalf of Iraq, but to a growing national consciousness which will not be satisfied until the country is free from foreign control. This desire for independence, which has found expression in continual pressure for a relaxation of mandatory control, is not in itself an unhealthy sign. It demonstrates, at least, that Iraqis generally are willing and eager to accept the burden and

¹ *Ibid.*, p. 134.

responsibilities of self-government and are not content to rest supinely while foreigners discharge those responsibilities on their behalf. The question of the capacity of Iraqis to assume these responsibilities is examined later in this report; but the fact that the desire to do so is present throughout Iraq is in itself evidence of a keen national spirit, without which the grant of independence would be as unprofitable as it would be unmerited.¹

From the first, the establishment of a stable government had been emphasized as one of the prerequisites of independence. Mr. Churchill's declaration of 1922 had cited it and it was periodically reasserted in annual reports and statements before the Mandates Commission. A considerable portion of the *Special Report* was devoted to an exposition of the form of governmental organization established and the achievements of the various administrative departments. The British Government does not seem to have been concerned with establishing any particular form of government or of administrative organization as absolute criteria of capacity for independence. Rather it seems to have been concerned merely to show that some stable form of government had been established which was capable of performing the necessary functions of an independent State. Thus the *Special Report* recapitulates the general provisions of the new constitution with reference to the organization of the executive and legislative organs. It presents the organization and achievements of the various administrative departments—of Defense; of the Interior with its divisions of general administration, police, and health; of Justice; of Finance; of Communications and Works, including Public Works, Posts and Telegraphs, Railways, and Port divisions; of Irrigation, Agriculture and Connected Services including Surveys and Tapu or Land Registry; of Commerce and Industry; of Education; of Antiquities; and of Auqāf or Religious Foundations.

In connection with the organization of the various departments one of the first points stressed by the Special Report was the relations between the British officials and their Iraqi colleagues. It described in detail the progressive devolution of authority from the British advisers to the Iraqi Ministers culminating in the transfer of all executive authority to Iraqi officials. Accompanying this was a rapid decrease in the number of British officials, both in the higher posts and in the technical and professional services. The report emphasizes that the position of the British advisers in the past few years has been increasingly limited to one not inconsistent

¹ *Special Report*, pp. 11–12.

with the existence of an independent State. In the words of the report:

They have endeavoured, in conformity with the policy of His Majesty's Government, to limit their advice to that which they would in any case have given if they had been the servants of a fully self-governing State. The result has been that their Iraqi colleagues have assumed to an increasing extent the real responsibility which must inevitably fall upon them when Iraq is admitted to membership of the League . . . that the general stability of the administration has been maintained is beyond question, and if the blame for individual failures is to be laid at the door of the Iraqi nation, it is only right that they should be given their fair share of the credit for the general measure of success achieved.¹

Thus the report testifies to the capacity of the Iraqi nation to produce the requisite leadership to operate such a political system as has been established.

The report then proceeds to an analysis of the achievements of the various departments of governmental activity for the purpose of showing that Iraq fulfills the conditions demanded by the criteria already enumerated. On the criteria of capacity for national defense, the British have taken the position that the country need not rely alone on its own military power and resources but may properly count on the guarantees of the League Covenant or military alliances to safeguard its territorial integrity and political independence.² The report proceeds to describe the organization and composition of the military arm, showing a force of approximately 10,000 men including motor machine gun and air units. The High Commissioner assured the Permanent Mandates Commission "that the Iraqi army and police would be sufficient to cope with anything that could be reasonably foreseen."³ Thus the existing status of the Iraqi defense forces was accepted as evidencing a reasonable capacity for self-defense.

Closely allied to the problem of national defense is that of internal security and public order. Basing its findings on the greatly improved crime and security statistics and on evidence of increased public confidence in the police, the *Special Report* finds "the state of the police may be regarded as highly satisfactory, and the great progress made in the past 10 years is a hopeful augury of the future."⁴

In regard to the problem of judicial administration the

¹ *Ibid.*, pp. 29-30.

² *P.M.C., Min.*, XXI, 90.

³ *Special Report*, p. 102.

⁴ *Ibid.*, p. 104.

Mandatory Government took the definite stand that the existing system in Iraq provided sufficient guarantees for protection of the interests of both natives and foreigners and that "the judicial system of Iraq could challenge comparison with that of her neighbors."¹ Obviously this position assumes that there is nothing inconsistent with independent status in the employment of foreign judges and advisers as an integral part of the system.² Likewise, the proposal of the Mandatory that Iraq be required to guarantee the maintenance of the existing system for a period of years after the acquisition of independence, indicates that a satisfactory system of judicial administration is considered an essential criterion of capacity for independence.

The *Special Report* demonstrates the financial soundness of the Iraq Government by the fact that in five of the nine fiscal years immediately preceding there had been a surplus of revenue over expenditures, with a net surplus of 204 lakhs of rupees. The Iraq share of the Ottoman debt, amounting with interest and amortization charges, to about nine and one half million Turkish pounds, has been almost wiped out during this period, with only three payments remaining of about 63,000 each. The set back during 1930-31 is attributed to the world economic crisis. The British personnel in the Finance Department was progressively reduced during this period from 86 in 1921 to 14 in 1925 and finally to 4 in 1930. The British Representative assured the Mandates Commission that

he had every confidence in the Government's financial caution. It had shown itself most anxious to preserve financial stability. Indeed, in the matter of debt redemption it had perhaps gone beyond what was necessary So far he had observed no signs of extravagance. The Iraqi government spent what it felt it could afford.³

It was further pointed out that the record so far had been made without the aid of receipts from the oil concessions. That the government services enumerated through the report were carried through with such a satisfactory budgetary condition was held to evidence adequate financial capacity and administrative ability to support the normal functions of government.

¹ *P.M.C., Min., XXI, 106.*

² Numerous precedents could be cited in support of such a conclusion, such as the provisions of the Lausanne Treaty concerning the employment of foreign advisers in Turkey, the recognition of the independence of Egypt in spite of the existence of the Mixed Court, extraterritoriality in China, and numerous cases of League supervision in the affairs of post-war Europe.

³ *P.M.C., Min., XXI, 95.*

The Mandatory Power has clearly recognized that the position of the minorities must be safeguarded but has taken the stand that adequate guarantees are provided in the constitution through the provisions for freedom of conscience and worship, the right to maintain private schools, and legal equality. The Mandatory took a definite position against the establishment of the minorities as autonomous enclaves within the Iraqi State. In reply to such a demand on the part of certain Kurdish deputies the High Commissioner took the stand that

it would be inadvisable to create the new administrative unit since, apart from the serious administrative difficulties which such a scheme would create, it would tend towards separation rather than towards that unity of all the communities of Iraq which should be the objective of policy both in the interests of the Iraqi State and of the Kurds themselves.¹

Likewise the Mandatory vigorously opposed the suggestion that the League maintain a resident commissioner in Iraq to report on minorities' problems. It was anticipated that a declaration would be required guaranteeing the permanence of the existing provisions for safeguarding the interests of the minorities similar to the Declaration of Albania upon its admission to the League of Nations.

The balance of the *Special Report* is devoted to evidence of the progress and accomplishments of the various governmental services. While there is no claim that any or all of these services are indispensable to qualification for independence, they do attempt to show that the existing government is functioning on a scale such as indicated by the reference in Article 22 of the Covenant to "the strenuous conditions of the modern world." Thus while not constituting general criteria of capacity they are evidence in support of certain criteria, such as the existence of "stable, legislative, judicial and administrative systems and all the working machinery of a civilized government." To what extent they constitute reliable and objective evidence of the fulfillment of the criteria selected must be determined but is outside the scope of the present study.

As already noted, the emergence of an Iraqi nationalism, distinct from Arab nationalism, is a comparatively recent development, largely post-war. Partly for this reason, the nationalist position has not been elaborately rationalized. Consequently, the argument from the nationalist side turns largely on an assertion of *rights* rather than *capacity*. The ardent nationalist is not seeking criteria of

¹ *Ibid.*, p. 117.

capacity but vindication of his rights. Fundamental in his argument is the doctrine of self-determination and the broken promises of the Allies. He can point to an almost unanimous demand for independence and he need go no farther back than the Anglo-French Declaration of 1918 for a recognition of the doctrine of self-determination for the Arab peoples. To examine further into his capacity for independence is for him but an evasion of the issue, a subterfuge by which to cheat him of his alleged rights. Thus the only valid criterion from his point of view is the expression of public opinion.

This attitude found repeated expression in the continuous opposition to the mandatory idea, the very word itself being banned in Iraq. The plea of the Emir Feisal before the Peace Conference in February, 1919, stressed the doctrine of self-determination and the unity of the Arab peoples.¹ With special reference to Iraq he pointed out that five of his commanding officers had come from Iraq and many of his men and that they had fought in his army "to vindicate their right to self-government." At the same time certain of the eleven points in his memorandum implied the existence of other criteria. Thus his claim that the Arab peoples "still have the capacity to play their part in the world" would seem to

¹ D. H. MILLER, *My Diary at the Conference of Paris* (New York, 1926), XIV, 227-34. Sir ARNOLD WILSON records the demand of Nationalist leaders in June, 1920: "They demanded the immediate formation of a Convention for Iraq, elected in conformity with Turkish electoral law, which would be empowered to draw up proposals for a National Government for Iraq as promised in the Anglo-French declaration of 8th November, 1918 it was no secret that the intention of the delegates was to arrange for a declaration by the Convention of the independence of Iraq, followed by the rejection of the British Mandate." (*Mesopotamia, 1917-1918* (London, 1931) p. 257).

WILSON reports a later secret meeting with extremist leaders to whom he had pointed out that revolution might retard the realization of their ambitions for Iraq: "They answered, without cynicism, but as a commonplace of politics, that as between nations liberty was not given, but taken; that a rebellion whether successful or not, was not only the best but the sole way to advance the cause of freedom. 'The British nation,' they concluded, 'is weary of wars and will make no more sacrifices; once the Mandate is granted and its terms settled we shall lose the chance of obtaining complete independence; nothing short of this will satisfy us, nothing else is worth having.'" (*Ibid.*, p. 268).

GERTRUDE BELL reported the reply of Jafar Pasha, later Minister of Defence in the Naqib's first Cabinet, when she said that they wished ultimately to give complete independence. "My Lady," he answered, "complete independence is never given; it is always taken." (Lady FLORENCE BELL, *op. cit.*, p. 569). Again she reported, "The Colonial Office has sent us a cable saying Feisal in his Coronation speech must announce that the ultimate authority in the land is the High Commissioner . . . Feisal urged that from the first he is an independent sovereign in treaty with us, otherwise he can't hold his extremists." (*Ibid.*, p. 619). And again, "The King and the Naqib have proclaimed to the listening Universe that they will never, so help them God, accept the Mandate . . . The Arabs won't submit to any diminution of their sovereign rights such as being placed in tutelage under the L. of N. They are ready to exercise those rights in such manner as to bind themselves by treaty to accept advice in return for help." (*Ibid.*, p. 644). Cf. *Supra*, p. 18-20.

imply a recognition of some relation between political capacity and readiness for independence. Or again he recognizes the importance of frontiers and of the social and economic background of the country. While these points were not raised specifically in the name of Iraqi Nationalism, the Emir Feisal was speaking in behalf of all the Arab peoples. Another interesting point raised in the Arab program was contained in a telegram from the Syrian Union Party¹ which included the stipulation that the constitution to be adopted should guarantee the rights of minorities, a clear recognition of a point which has loomed large in the consideration of Iraqi independence. This position is maintained by the Iraqi Constitution and officially declared by the Iraqi Government in its declaration to the Kurds and other minorities and still more emphatically by its declaration to the League whereby the rights of the minorities are made a matter of international concern. Or again it may be said that the Iraq Government recognized the criteria of self-defense and security through its willingness to enter into the Treaty of Alliance with Great Britain. The same thing might be said as to the necessity for a stable and efficient government in view of the acceptance in principle of the need for foreign experts and advisers even after independence is achieved.

While it may be claimed that Iraq through its Declaration to the League embodying the guarantees required by the Council's resolution of May 19, 1932, had acknowledged the validity of the various criteria enumerated by the Mandates Commission, it must be remembered that their validity as criteria of capacity was vigorously contested up to the time that the Mandatory had indicated that these conditions were considered to have been fulfilled in the case of Iraq. Up to the unconditional promise of Great Britain to recommend Iraq for admission to the League in 1932, the Iraqi nationalists demanded their independence as of right on the basis of the Allied promises and the doctrine of self-determination. From their point of view the guarantees embodied in the Declaration constituted the maximum concessions which they were willing to offer as the price of independence, just as, on the other hand, they constituted the minimum which the League was willing to accept. But whether considered from one or the other point of view, they at least represent a working basis for compromise and negotiation.

The Mandated territories are distinctive in that they involve a third party with a direct and even prevailing interest in the deter-

¹ MILLER, *op. cit.*, XVII, 487-88.

mination of the criteria of capacity. The findings of the Permanent Mandates Commission as to the essential criteria of capacity have become authoritative so far as the Mandates are concerned through their approval by the Council of the League. Representing the considered judgment of an international group of experts in problems of mandatory and colonial administration, a judgment motivated presumably by a world outlook rather than by special national self-interest, these criteria are of special interest for comparison with those advanced by the two immediately interested parties to the mandatory relationship.

The first requirement of "a settled Government and an administration capable of maintaining the regular operation of essential Government services"¹ was acceptable to all parties under the interpretation of the Mandatory that an "ideal standard of efficiency and stability" was not required, an interpretation accepted by the Mandates Commission. Under the vague and indefinite wording of this criterion the practical determination of what standard should be required was left to the Mandatory Power, whose interpretation has apparently proved acceptable to the Commission.

The requirement that the territory concerned "must be capable of maintaining its territorial integrity and political independence"² was likewise accepted by the Mandatory with reservations to the effect that this did not exclude reliance upon the guarantees of the League Covenant or military alliances, an interpretation which was likewise accepted by the Commission.

The third requirement that the territory "must be able to maintain the public peace throughout the whole territory"³ was likewise advanced by the Mandatory with the understanding that it should not be applied in terms of an ideal standard.

The further requirement that the territory "must have at its disposal adequate financial resources to provide regularly for normal government requirements"⁴ was also emphasized by the Mandatory in its special report and in the statements of its accredited representative before the Commission. Here again, however, the indefinite wording left the interpretation of what were the "normal Government requirements" which must be provided for to the Mandatory Power.

The final criterion of "laws and a judicial organization which will afford equal and regular justice to all"⁵ was accepted in

¹ *P.M.C., Min., XX, 229.*

² *Ibid.*

³ *Ibid.*

⁴ *Ibid.*

⁵ *Ibid.*

principle by all parties and was considered as being satisfied by the Judicial Agreement of 1931, Article 18 of the Iraqi Constitution, and various pronouncements of policy with regard to minorities. Once again, however, it was emphasized that an ideal standard could not be applied.

With regard to all of these conditions the Mandatory Power took the position that the requirement that the territory be "fully self-governing" did not exclude the employment by Iraq of foreign advisers and technical experts, a position which, in view of historical practice, particularly in recent years under League auspices and initiative, could scarcely be denied by the Commission. Inasmuch as the Commission accepted the interpretations of Great Britain as Mandatory there would seem to be no essential difference of opinion between them as to these five criteria.

On the other hand, no attempt was made to express the criteria in quantitative terms nor was the evidence presented submitted to statistical analysis in an attempt to arrive at a more precise measurement of the actual progress achieved or for purposes of comparison with the conditions obtaining in comparable independent states. In fact, one gains the impression from the minutes of the Commission, that the objective evidence presented was of only secondary importance to the Commission, the primary consideration influencing the final judgment being the favorable opinion of the Mandatory Power. Further than that, one is led to the belief that the Commission, or at least some of the members, was inclined on the basis of the evidence presented to disapprove immediate emancipation but was led to acquiesce by the firm stand of the Mandatory Power.¹

¹ The present writer believes that the Mandates Commission in adopting this negative attitude failed to fulfill its responsibilities as the guardian of the mandatory principle. If the Mandatory's opinion is to be conclusive, the question of the termination of a mandate may easily be entirely subordinated to imperial policy which may dictate either the premature abdication from motives of political expediency or may indefinitely deny the existence of the requisite conditions for the granting of independence. While it is not to be expected that the Commission's judgment is likely to conflict with that of the Mandatory, it is essential that the high standard of independent and impartial judgment shown by the Commission in the execution of its supervisory functions should be maintained in its consideration of the emancipation of mandated areas. In fact, from the point of view of the mandated peoples, it is of even greater importance with regard to the termination of the mandatory regime, inasmuch as one of the principal advantages of the mandatory system, from this point of view, lies in the provision for the eventual termination of their dependent status as a matter of right rather than of political expediency.

It may be argued that the Mandatory is responsible to third parties for the effect of terminating the mandate and that therefore the opinion of the Mandatory as to the time of termination should prevail over the judgment of the Mandates Commission. This seems to have been the conclusion reached by the Council on the question of contractual obligations assumed by the Mandatory on behalf of the Mandate. However, Quincy Wright, after an

Given this uncertainty, it is not surprising that the Mandates Commission should insist on certain guarantees by the emancipated State that it could maintain those conditions whose fulfillment had led to the termination of the mandate. Logically one might suppose that a State really qualified for independence would require no guarantees beyond those involved in the obligations of international law and adhesion to the League Covenant. But if the criteria of capacity by which the new state has been judged ready for independence are admittedly defective then one may well desire additional guarantees to offset the dangers of a premature admission to full Statehood. Such seems to have been the conclusions of both the Mandates Commission and the Mandatory Power.

The first guarantee upon which both the Commission and the Mandatory agreed was that concerning the rights of minorities.

In the case of Iraq, the Commission is of opinion that the protection of racial, linguistic, and religious minorities should be ensured by means of a series of provisions inserted in a declaration to be made by the Iraqi Government before the Council of the League of Nations and by the acceptance of the rules of procedure laid down by the Council in regard to petitions concerning minorities, according to which, in particular, minorities themselves, as well as any person, association, or interested State, have the right to submit petitions to the League of Nations.

This declaration, the text of which would be settled in agreement with the Council would contain the general provisions relating to the protection of the said minorities accepted by several European States.

In addition, Iraq would accept any special provisions which

exhaustive analysis of this problem, concluded, "the Council might well have taken the view that loans, contracts, or treaties which impose fairly permanent burdens on the territory should receive its sanction before ratification by the Mandatory, both because they might involve an eventual responsibility even if not expressly sanctioned and because the Council's scrutiny would be an additional security against violations of the mandate which might occur in such agreements . . . we must conclude that the Mandatory can impose obligations upon mandated communities without express Council consent but that the League is bound to see that rights accruing to foreigners under them are respected by the successor in case of transfer, and possibly is, in some cases, under financial responsibility itself in case of default." (*Mandates under the League of Nations*. (Chicago, 1930, p. 515). But while the Mandatory may be held responsible for the obligations assumed while it was still Mandatory, it is very doubtful that the Mandatory could be held responsible for acts committed by the government of an emancipated area unless they related to definite contractual or treaty obligations initiated under the mandatory regime. Furthermore, the Council has insisted that its approval is required in cases involving change of boundaries, or amendment of the mandate. Certainly the decision as to the termination or retention of the mandatory regime is at least equally fundamental and if League supervision is required over the day by day administration of the mandates it should be even more necessary with regard to his act which represents the final judgment on the success or failure of the mandatory regime.

the Council, in agreement with the Iraqi Government might think it necessary to lay down as a temporary or permanent measure to ensure the effective protection of the racial, linguistic, and religious minorities in Iraq.

Iraq would agree that, in so far as they affected persons belonging to the racial, linguistic or religious minorities, these provisions would constitute obligations of international concern and would be placed under the guarantee of the League of Nations.

Iraq would agree that any Member of the Council would have the right to bring to the attention of the Council any infraction or danger of infraction of any of these stipulations, and the Council could thereupon take such action and give such directions as it might deem proper and effective in the circumstances.

Finally, Iraq would agree that any difference of opinion as to questions of law or fact arising out of these provisions between Iraq and a Member of the Council would be held to be a dispute of an international character under Article 14 of the Covenant of the League of Nations. Any such dispute would, if the other party thereto demanded, be referred to the Permanent Court of International Justice. The decision of the Permanent Court would be final and would have the same force and effect as an award under Article 13 of the Covenant.¹

The Mandatory Power had likewise foreseen in its *Special Report* the necessity for a guarantee of minority rights, suggesting the Albanian Declaration as a model. But where the Commission was considering even more stringent guarantees, the Mandatory deprecated "any proposal to add further safeguards to those which were provided in the Albanian Declaration"² and in particular opposed every suggestion of a special resident representative of either the Mandatory or the League.

The next two guarantees related to the interests of foreigners in judicial matters and called for "a solemn pledge to the Council guaranteeing those interests."³ This pledge was to be based upon the Judicial Agreement of March 4, 1931, but the Mandates Commission felt that the foreign judges selected thereunder should not be exclusively of British nationality. The Mandatory Power was not opposed to the guarantees for the judicial system but suggested that it might be considered for a "transitional period of ten years."⁴ The Mandatory's representative "thought that his

¹ *P.M.C., Min.*, XXI, 224.

² *Ibid.*, p. 115.

³ *Ibid.*, p. 224.

⁴ *Ibid.*, pp. 205-7

Government would have no objection" to the inclusion of other than British judges in the foreign personnel provided for in the Judicial Agreement.¹

The Mandates Commission recommended that

Iraq should formally undertake before the Council in accordance with the resolution of September 4, 1931, to ensure and guarantee freedom of conscience and public worship, and the free exercise of the religious, educational and medical activities of religious missions of all denominations, whatever their nationality, subject to such measures as may be indispensable for the maintenance of morality and public order.²

This formula involved no radical departure from British expectations although the accredited representative indicated his belief that "there would never be any danger of interference with foreigners which could not be adequately dealt with by a diplomatic representative."³

The remaining guarantees concerning the rights and obligations arising under the mandatory regime follow naturally from the principles enunciated by the Council of the League of Nations on September 15, 1925, to wit:

That the cessation or transfer of a mandate cannot take place unless the Council has been assured in advance that the financial obligations assumed by the mandatory Power will be carried out and that all rights regularly acquired under the administration of the former mandatory Power shall be respected.

Accordingly, the Commission recommended that Iraq should make a declaration to the Council concerning the financial obligations regularly assumed on its behalf by the Mandatory Power and further that

Iraq should likewise give an undertaking to the Council to respect all rights of every kind legally acquired before and during the mandatory regime and to maintain in force the international conventions both general and special to which, during the currency of that regime, Iraq or the mandatory on its behalf has acceded, for the period of validity provided for in such Conventions subject to any right of denunciation which the parties may possess.⁴

The final condition set by the Commission was that Iraq should formally accept the obligation to grant most-favored-nation

¹ *Ibid.*, p. 110.

² *Ibid.*, p. 224.

³ *Ibid.*, p. 117.

⁴ *Ibid.*, p. 224.

treatment subject to reciprocity to all States Members of the League for a transitional period, the duration of which would be determined by negotiations with the Council.¹ This condition was strongly opposed by the accredited representative of the Mandatory Power and was the only provision so opposed to find its way into the final recommendations of the Mandates Commission. It seems clear from the discussion in the Commission that this condition was not considered one of the essential criteria of capacity for independence but was rather regarded "as an ideal to be pursued in the interests of peace." It is significant that the Commission was far from unanimous agreement on this clause and in its original report to the Council on the general conditions to be required for the termination of a mandate had merely suggested the desirability of such a clause "in addition to the *foregoing essential clauses*." The Mandatory's representative pointed out that such a requirement would constitute a derogation from sovereignty, that in its particular economic position Iraq would benefit little from the reciprocity involved, and that in any case it should not apply to the special favors granted to the contiguous territories formerly parts of the Turkish Empire.² As finally elaborated in Iraq's Declaration to the Council, the economic equality clause was largely emasculated, being limited to ten years duration and reserving to Iraq the right to denounce the most-favored-nation agreement with regard to any League member whose measures adversely affected Iraq's chief exports and who failed to come to agreement within three months. Likewise, frontier or customs union agreements with contiguous territory or with states formerly a part of Turkey were excluded from the working of this clause.

Some members of the Commission pressed for an extension of the economic equality clause to cover archeological research.³ This proposal was likewise opposed by the accredited representative of Great Britain and was finally omitted. The Commission seemed to favor a recommendation for the appointment of a League representative as resident supervisor of minorities problems, but abandoned it in view of the opposition of the Mandatory Power. In general the Commission avoided any detailed analysis of the factors involved in the broad criteria adopted though during the course of the discussion a considerable list of the factors to be considered were enumerated.

One proposed criterion which was not adopted is of particular interest. It read: "The population of the territory which is to

¹ *Ibid.*

² *Ibid.*, p. 118.

³ *Ibid.*, pp. 117-19

attain full sovereign power must be guaranteed the well-being and development which the mandates regime had secured for it.”¹ This statement well illustrates the difficulty of reconciling the dual aspects of the mandatory system. On the one hand, the system aims at the gradual evolution of politically backward peoples to a condition where they are capable of independent self-government. On the other hand, the system aims at the institution of a supervisory machinery which shall guarantee that the tutelage imposed by the mandatory system operates to the real benefit of the people concerned and that the administration imposed maintains a high level of efficiency and integrity. The problems facing the Mandates Commission in its early years have probably stressed the latter aspect of the mandate idea. Naturally the Commission has sought to have the standards of mandatory administration set as high as possible. But it would be possible for a great Power to set a standard as Mandatory which an independent native government could not hope to attain for many, many years, if ever. Furthermore, a higher standard could doubtless be maintained by denying all positions of responsibility and control to native elements. Thus it is conceivable that at the time when the mandated people were fully capable of governing themselves, they might still be unable to maintain as high a level of administration in certain respects, or even in all respects, as could the Mandatory Power by continuing the mandatory relationship. If this were the case, the cessation of the mandate would necessarily mean a temporary or even permanent loss of some of the benefits “which the mandates regime had secured for it.” Thus the proposal that the mandated population “must be guaranteed the well-being and development which the mandates regime had secured for it” would indefinitely postpone the emancipation of such territories. It is not surprising that this proposal failed to find its way into the final recommendations of the Mandates Commission.

In summing up the criteria of capacity advanced in the case of Iraq, one finds two distinct types of standards advanced, the one dealing with what the Mandates Commission calls “*de facto* conditions,” the other with certain moral and spiritual qualities which are incapable of objective appraisal and are therefore to be tested by the willingness of the people to offer satisfactory guarantees as to their future conduct in matters in which these qualities might prove the determining factors. The former are the measure of past achievement, the latter are the promise of its permanence.

¹ *Ibid.*, XIX, 175.

Both the Mandates Commission and the Mandatory Power are in substantial agreement as to the essential criteria, a composite list of which would include the following; settled frontiers; a stable government with stable legislative, judicial, and administrative systems supported by public opinion; adequate capacity for national defense and the maintenance of public security; an equitable judicial system; adequate financial resources and fiscal machinery; equitable treatment of minorities; and fulfillment of international obligations and responsibilities. Lacking objective evidence of the public spirit behind these "*de facto* conditions," both agreed in demanding further guarantees as to the rights of minorities, the rights and interests of foreigners, freedom of conscience, public worship, and missions, the financial obligations and legal rights arising under the mandate regime, the fulfillment of international conventions entered into prior to emancipation. In addition, the Commission demanded a guarantee of reciprocal most-favored-nation treatment for all members of the League, a demand which the Mandatory found inconsistent with full sovereignty.

Both parties recognized the relative nature of the criteria, the Mandates Commission tending to demand a higher level of achievement than did the Mandatory Power. Likewise, the Mandatory was less insistent on the guarantees, seeming to find in the record of past achievement more evidence of the intangible factors than did the Mandates Commission.

As for the Iraqi people, while it might be argued that by the Declaration to the Council of May 19, 1932, they had impliedly accepted the validity of these criteria, this would seem to be a scarcely tenable position. At no time did the Iraqis accept the mandate principle or base their demand for immediate independence upon any other criteria than the right of self-determination and the promises of the Allies.

CHAPTER III

CRITERIA IN THE PHILIPPINES

While not formulated as a demand for independence until the 1890's, the roots of the Philippine independence movement go back to the beginning of the nineteenth century. For a hundred years before American intervention, Philippine history was marked by constant pressure for reform on the part of leading Filipino and Spanish liberals, punctuated in every decade by local uprisings, mostly of minor importance, but evidencing the widespread unrest. Occasional concessions by the Spanish Government were usually followed by a reaction which largely nullified the gains. These oscillations in policy were due to the ebb and flow of liberalism in Spain itself. Thus in 1810 the triumph of constitutionalism in Spain brought representation of the Philippines in the Spanish Cortes, while in 1822 the reaction brought a new Governor who promptly replaced most of the Filipino officials with his Spanish followers. With the overthrow of the monarchy in 1868, the Philippines enjoyed a brief liberal regime under a new government, but with the restoration of Isabella II and the appointment of a reactionary Governor, the liberals were vigorously persecuted and the liberal reform measure revoked. Throughout this period the liberals had aimed at the secularization of the clergy and the elimination of the political control of the religious orders. In 1872 the abortive uprising of Cavite was promptly suppressed and three of the leaders of the clerical faction were executed on the charge of having incited the revolt.

In the very excesses of the reactionaries of this period lay the germs of the later independence movement. The executed priests were looked upon as martyrs to the cause of liberal reform and the increased severity of repressive measures pointed the way to the need for stronger organization of the liberal elements and also encouraged the belief that no real reform could be expected under the Spanish rule. From this year dated the strenuous efforts at popular education and organization of that great leader, Marcelo H. del Pinar, who for the next fifteen years in the Philippines and for the rest of his life in Spain pressed forward the struggle for reform. By far the most popular and influential leader was Dr. Jose Rizal whose two novels on Philippine life and politics were tremendously effective propaganda. In 1892, Rizal returned to the

Islands and soon organized the secret society known as the Liga Filipina to preach the doctrines of unity, organization, and nationalism. Within a month he was arrested by the Spanish authorities and deported to Dapitan where he spent the next four years until appointed as a medical officer to the Spanish forces in Cuba. Before he could sail, the revolt of the Katipunan broke out and he was promptly accused of complicity. After some delay, he left for Spain but when his ship reached Suez he was placed under arrest on the receipt of telegraphic instructions. He was returned to Manila and after a summary court martial was sentenced to death.

The revolt which was responsible for the persecution of Rizal was the outcome not of his own Liga Filipina but of another secret society which had been founded in the same year. The Katipunan was founded at the time of Rizal's deportation to Dapitan by Andres Bonifacio. Where the Liga Filipina had been interested in an evolutionary development, the Katipunan was ready for revolutionary procedures. The former had appealed to the intelligentsia and the upper classes, the latter was mainly plebeian in character. The Katipunan succeeded in concealing its activities until 1896 when the vigorous repressive measures adopted against it forced the leaders to flee from Manila and take refuge in the provinces where they speedily raised the standard of revolt. With the outbreak of military activity, leadership soon passed to Emilio Aguinaldo who soon became the recognized head of the revolutionary movement. Hard-pressed by the demands of the Cuban insurrection, the Spanish were anxious for a peaceful settlement of their difficulties and in the summer of 1897 the insurgents accepted the services of Pedro Paterno as mediator. By December 14, he finally secured an agreement known as the Pact of Biac-na-bato, the terms of which have not been authoritatively established, but which are alleged to have included certain general reforms and the payment of an indemnity to those who had lost property during the war, to widows and orphans, and to the exiled leaders.¹ In spite of the proclamation of Aguinaldo on December 16, 1897, calling upon his followers to lay down their arms and accept the agreement under the Pact of Biac-na-bato, several groups of insurgents continued their activities against the Španiards. General Macabulos called

¹ Aguinaldo and certain other leaders were to leave the Islands and would receive payment of the indemnity upon their arrival in Hongkong. Forbes points out that "it is due General Aguinaldo and his immediate associates to state that the funds received by him were deposited in a bank in Hongkong and kept practically intact until a portion was taken for the purchase of arms after Commodore Dewey's victory in Manila Bay." (W. C. FORBES, *The Philippine Islands* (New York: Houghton, Mifflin Co., 1928), I, 59).

together an assembly in Central Luzon which drafted a provisional constitution which was to exist "until the general government of the Republic in these Islands shall again be established."¹

When war commenced between the United States and Spain, the American Pacific fleet was at Hongkong under Commodore Dewey, and general Aguinaldo had just arrived at Singapore on his way to Europe. Consul General Pratt secured an interview with Aguinaldo through the aid of an Englishman named Bray and promptly cabled Dewey at Hongkong the following message: "Aguinaldo insurgent leader here. Will come Hongkong arrange with commodore for general cooperation insurgents Manila if desired. Telegraph. Pratt." The reply was: "Tell Aguinaldo come soon as possible. Dewey." Aguinaldo left for Hongkong but Dewey had sailed for Manila before the Filipino leader arrived. Arrangements had been made for Aguinaldo and certain of his supporters to be transported to the Philippines on a naval vessel where he arrived on the nineteenth of May.

The record of the understanding arrived at between Consul General Pratt and General Aguinaldo and of the latter's relationships with Commodore Dewey is by no means clear. It may be conceded that the American Government never committed itself to the support of the Philippine independence movement in any legally binding fashion. However, it would seem equally clear that the aims and aspirations of the Filipinos were well known to the American authorities, that the latter, while refraining from any promise of support, were equally careful to refrain from any assertion of a contrary purpose which might have discouraged Filipino co-operation, and that every facility was extended to Aguinaldo in his operation against the Spanish forces. If Aguinaldo was misguided in assuming that the declarations of American officials in the Far East might be taken as indicative of the policy of the American Government, it was not an unreasonable inference in view of the altruistic tenor of the Congressional and Executive pronouncements concerning America's purpose in entering the war with Spain. In any event, this mistaken conception of American intentions clearly led to Aguinaldo's return to raise again the standard of revolt and to render material assistance to the American forces in overthrowing Spanish control of the Islands.

Shortly after his arrival in the Philippines, Aguinaldo issued a proclamation on May 24, announcing the establishment of a dictatorial

¹ M. M. KALAW, *Development of Philippine Politics* (Manila, P.I.: Oriental Commercial Co., 1927), p. 98.

government. In an accompanying proclamation he referred to America as having "come to manifest even here a protection which is decisive as well as disinterested toward us, considering us endowed with sufficient civilization to govern by ourselves this our unhappy land."¹ On June 12, 1898, the independence of the Philippines was declared in a proclamation signed by Aguinaldo and ninety-seven of the Filipino leaders. On the twenty-third, a revolutionary government was established to replace the dictatorship, pending the framing of a constitution. During this time the insurgent forces had been extremely active, driving back the Spanish forces in a series of a remarkable victories until, as described by McCutcheon, "by June 30 they had taken almost every province in Luzon, with the exception of isolated garrisons, and were hammering away at the doors of Manila."²

The first real break between the Filipino and American officials came with the capitulation of Manila on August 1, when the American forces prevented the Filipinos from entering the city and subsequently forced them to withdraw from the suburbs. The failure of the Treaty of Paris to mention Philippine independence soon aroused suspicion as to American intentions and these suspicions were confirmed by the "benevolent assimilation" proclamation of President McKinley on December 21. This proclamation brought prompt protest from the Revolutionary Government as did the American attempt to seize Iloilo. Agreement was finally reached for the creation of a mixed commission to attempt to work out a compromise and to secure a delay during which the one party hoped for favorable developments in Washington, the other for re-enforcements. Hostilities commenced on February 4 outside Manila and for the next two years the Americans were engaged in the task of suppressing the insurgent forces.

On January 23, 1899, the Revolutionary Government had been replaced under the new constitution of Malolos by the Philippine Republic which was proclaimed with elaborate ceremonies at the revolutionary capital. In the meantime the Shurman Commission had been appointed by President McKinley at the suggestion of Admiral Dewey, but it did not arrive in the Islands until after the outbreak of hostilities, nor was it authorized to discuss the question of independence. By the summer of 1900 pacification was sufficiently advanced to permit the transfer of authority from military to civil

¹ *Ibid.*, p. 110.

² C. E. RUSSEL, *The Outlook for the Philippines* (New York: Century Co., 1922), p. 77 n.

officers and a new commission under Mr. Taft assumed authority on September 1. On March 2, 1901, Congress authorized the establishment of a civil government for the Islands. On April 19, Aguinaldo, following his capture by General Funston, issued his peace proclamation. On July 7, Taft was appointed as the first Civil Governor for the Islands, a title subsequently changed to Governor-General. On September 1, three Filipinos were appointed to the Civil commission. However, pacification was not yet complete, and it was not until July 4 of the following year that all military government was terminated and amnesty proclaimed.

For the next few years the independence movement was rigorously suppressed and no political organization aiming at independence was allowed, even though its methods might be purely peaceful and legal. The Federal Party, whose formation had been encouraged by Commissioner Taft in 1900, had adopted a platform with planks for peace and annexation, acceptance of American sovereignty in perpetuity, and increasing autonomy to end in statehood. As the hopelessness of continued resistance became increasingly obvious, the Federal Party attracted many Filipinos mostly because of the desire for peace and because this party was the only one through which they could share in the political life of the Islands.¹ Various attempts to form political parties on nationalist and independence platforms were frowned upon by the government. However, after the visit of the Congressional Party under the leadership of Secretary of War Taft in 1905 and the decision to increase the degree of Filipino participation in the government through the establishment of a legislative assembly, the ban on political party organization was lifted and nationalist parties immediately sprang up showing that the independence movement had been quiescent but by no means dead. Three nationalist parties were formed in 1906, the Partido Independista Inmediatista, standing unreservedly, as its name implied, for immediate independence; the other two, the Partido Urgentista and the Comité de la Nacional laying the emphasis on eventual rather than immediate independence. During the course of the year, the last two organizations merged as the Unión Nacionalista. With the calling of the elections for the new assembly, the nationalist leaders determined to submerge their differences in order to present a united ticket and in 1907 succeeded

¹ Ex-Governor Forbes, in speaking of the growth of the Federal Party, says: "There is little evidence that many Filipino leaders really wanted permanent American sovereignty, but there is no doubt that all of them were actively interested in an increasing measure of participation in their Government". (FORBES, *op. cit.*, I, 145.)

in bringing about a fusion of the three parties into the Nationalist Party. In the meantime, the Federal Party had abandoned its annexation plank and taken a stand for ultimate independence and in 1907 reorganized as the Partido Nacional Progresista.

Thus the election of July 30, 1907, found two nationalist parties in the field fighting a campaign primarily on the issue of immediate versus ultimate independence. The results of the election gave the radical nationalists an overwhelming majority in the new assembly. The elections of 1909 increased the Nationalists' majority and every succeeding election has left them securely in power, in spite of the fact that the Progressives abandoned their ultimate independence plank and attempted to outdo the Nationalists in extreme nationalism. New parties have appeared, the Nationalists themselves have split only to fuse again, but through it all the independence plank has always emerged as the fundamental basis of all the parties, the primary differences being those of party leadership. Not only has the independence issue controlled the national assembly elections but it has been the controlling issue in provincial and municipal elections as well.

Every session of the legislative body has seen the passage of a resolution favoring immediate independence. The two dominant parties in 1910 joined in petitioning for the establishment of a Philippine constitution. In 1925 the two parties formed a joint Supreme National Council for the determination of policy "in all that concerns the campaign for independence, all matters which may affect the relations between the United States and the Philippines, and the administration of the interests of the country in general."¹ The Council agreed that the next vacancy in the post of Resident Commissioner at Washington should be filled from the Democratic (minority) party. The Council was to supervise the collection and disbursement of all independence campaign funds. Both parties sponsored the passage of the Jones Act, the unsuccessful Clark Amendment, and the Independence Bill of 1933.

In 1904 an unsuccessful effort had been made to establish a permanent independence commission or bureau in the United States to carry on the campaign for independence in Washington and throughout the country. The creation of the post of Resident Commissioners at Washington in 1907 gave the Filipinos official spokesmen at Washington who have persistently advanced the cause of independence. Following the passage of the Jones Act in 1916, the independence campaign abated while the United States

¹ *Ibid.*, p. 120.

was involved in the World War. After the Armistice the dominant parties split on the issue of raising the independence question at the Peace Conference, but the Nationalist view prevailed that an Independence Mission should be sent to present their claims to the American Government at Washington. In this, as in subsequent Missions, both majority and minority parties were represented and presented a unanimous demand for immediate independence. Although frankly dissatisfied with many of the provisions of the bill finally passed in January, 1933, the Filipino Mission unanimously supported the measure as the most desirable that seemed possible of adoption.

In contrast to Iraq, the literature of the Philippine question is voluminous. The search for criteria of capacity is difficult not from any paucity of source material, but rather from the fact that the two schools of thought, while ostensibly aiming at the same goal, start from radically different premises. One group has based its argument on an alleged consideration of what would be to the best interests of the Filipinos (with considerable emphasis at the same time on the best interests of the United States), while the other school has considered the problem from the point of view of whether or not the Filipinos were capable of maintaining an independent government. Still another group might be discerned which would make the sole criterion that of American interests in the Philippines, especially economic interests.¹

Another factor confusing the appraisal of the American position is that American policy with regard to the Philippines has been so ambiguously expressed as to be susceptible of conflicting interpretations. Furthermore, the pronouncements of subordinate administrative officials from Consul Pratt to the Secretary of War, have been received by the Filipinos as authoritative, and though creating no legally binding obligations on the Government of the United States

¹ Senator CUMMINS gave clear expression to these divergent viewpoints in the debate on the Jones Act in 1916 when he said: "My inquiry related to the standard, the guide that hereafter should determine what the American Congress shall do. If the question is presented to me, for instance, are the people of the Philippine Islands prepared to establish and maintain a free and independent government? As an honest man I would answer the question yes or no, according to the fact, no matter what the interest of the people of the United States might be. But if the question were submitted to me, is it for the best interests of the people of the Philippine Islands that they separate themselves from the American Nation? I must answer that question honestly, and it might be answered, it would not be for the best interests of the people of the Philippine Islands to separate themselves from the American Nation, even though I could affirm that it was within the probabilities that the country there would establish and maintain a free and stable government. I might believe that their prosperity and welfare would be better served as a State of the American Nation than as an independent country." (*Cong. Rec.*, 64th Cong., 1st Sess., Vol. 53, p. 607.)

would seem to have involved a moral obligation. Furthermore, except for the Senate Resolution of February 14, 1899, and the preamble to the Jones Act, American long-run policy with respect to the Philippines has been the expression of the executive branch alone and, in fact, at times there has been a definite divergence of policy between the executive and legislative branches, as in the Wilson and Hoover administrations. While there has been little divergence between the two great parties on the question of ultimate independence, the basis for determining the time when independence should be granted has tended to become a partisan issue.

What ever may be one's opinions as to the obligations created under earlier pronouncements, the preamble to the Jones Act of 1916 very definitely committed the United States to the granting of independence to the Philippine Islands "as soon as a stable government can be established therein." The history of the wording of that preamble clearly demonstrates that it was the intention of Congress at that time to make the establishment of a stable government the criterion of readiness for independence. The wording of the preamble to the original Jones Bill which had failed to pass in 1914, was the same as that of the bill finally passing in 1916, namely:

Whereas it was never the intention of the people of the United States in the incipency of the War with Spain to make it a war of conquest or for territorial aggrandizement; and

Whereas it is, as it has always been, the purpose of the people of the United States to withdraw their sovereignty over the Philippine Islands and to recognize their independence as soon as a stable government can be established therein ¹

However, when this bill was introduced in the Senate in 1916, the Senate Committee had changed the wording of the preamble to the following:

Whereas it is desirable to place in the hands of the people of the Philippines such an increasing control of their domestic affairs as can be given them without in the meantime impairing the sovereignty of the United States, in order that, by the use and exercise of popular franchise and governmental powers, they may be the better prepared to fully assume the responsibilities and enjoy all the privileges of complete independence, which it is the purpose of the United States to grant when, in the judgement of the United States, the

¹ *Cong. Rec.*, 63rd Cong., 2nd Sess., Vol. 52, p. 873.

people of the Philippine Islands shall have shown themselves to be fitted therefor; ¹

This wording was vigorously attacked in the Congressional debate on the measure. Then it was that Senator Cummins raised his query, previously cited, as to what should be the "standard, the guide that hereafter should determine what the American Congress shall do."² He continued:

I am unwilling to transform that vague but really well-understood promise that whenever the Philippine people were able to maintain a stable government of any kind, no matter whether it was our kind or not, we would give them the opportunity to do it. Now, by this preamble there is presented to me and to every Member of the Congress the question, whether I believe that the Philippine people would be better off, whether their welfare would be promoted, whether they would grow rich more rapidly, be better governed, as a part of the United States or as an independent State or country. I think we are doing a grave injustice to the history of the relations established between the United States and the Philippines to now change the understanding by the use of this language This language means to me that so long as the Congress of the United States believes that we can govern the Philippine Islands better than the people themselves can govern them no separation shall take place.³

The decision to restore the original wording and the passage of the bill with the stable government proviso clearly indicated the definite intention of Congress that independence should be contingent upon the establishment of a stable government. Unfortunately, the term "stable government" did not prove to have any such "well-understood meaning" as Senator Cummins had assumed. The meaning which he had assumed was that which was expressed later by Senator Cutting when he said:

A stable government has been defined repeatedly in international law and over and over again by American precedents. It always means the government which can maintain law and order and can fulfill its international obligations.⁴

On the other hand, many other interpretations have been offered running from the mere requirement that the government should be based upon the consent of the governed to the requirements that it should be a representative government or even a republican

¹ *Ibid.*, 64th Cong., 1st Sess., Vol. 53, Part I. p. 502.

² *Supra*, p. 47, n.

³ *Cong. Rec.*, 64th Cong., 1st Sess., Vol. 52, pp. 606-7.

⁴ *Hearings of House Committee on Insular Affairs*, 1915, p. 15.

government and that it should be capable of maintaining the standards of a particular type of civilization and the levels of governmental efficiency of the most advanced nations.¹

The contrasting views were well exemplified in a speech of Senator Thomas who said:

I do not think it is possible for one people to educate another people to its standard of efficiency either in self-government or in any other sort of government . . . I do not believe that if the United States retained the Philippine Islands forever for the sole purpose of educating the Filipinos into the capacity for self-government — and we do not pretend to retain them for any other — that such purpose would be accomplished; that is, from the standpoint of Anglo-Saxon ideals of self-government. If I understand the attitude of some of the opponents of this measure . . . it is that out of our occupation and possession of the Philippine Islands has been evolved a duty — a solemn, unavoidable duty — resting upon the shoulders of the American people requiring them to transmit, before their protectorate shall be ended, no matter how long it may take, to the people of the Philippine Islands its own institutions, its own ideas of government, its own bases of society, its own methods of civilization . . . I know

¹ Examples: Senator Borah: "The attitude of the Republican Party was that we ought to stay in the Philippines until we enabled the Filipinos to exercise the art of self-government — and I am not afraid to say in the face of history, that the Filipino people will not be fitted for self-government, inside of 200 years."

Senator Sterling: "When we speak about government for the Filipinos what kind of government do we mean — an autocracy, a monarchy, an oligarchy, or do we as American citizens, used to American institutions, demand that when they have their independence they organize not simply a stable government, as a monarchy may be stable, or as an autocracy may be stable, but a free, popular government, the ideal of America and American citizens? That is the kind of a government we want them to have." (*Cong. Rec.*, 64th Cong., 1st Sess., Vol. 53, p. 722).

To which Senator Williams replied: "Great God, Mr. President, if the United States had been charged up with all the ward politics of Philadelphia perpetrated by the Republican Party, or all the ward politics of New York perpetrated by both parties, how long do you think it would have taken us to prove to some sovereign suzerainty somewhere else, asserting superior culture that we were capable of self-government? You say that the Filipinos have got to 'demonstrate' that they are capable of self-government. How can a child demonstrate a sum in arithmetic or in algebra as long as the professor keeps working it? . . . As for all this talk about 'Anglo-Saxon' civilization, do you imagine that anybody is absurd enough to suppose that the Filipino can mount to our standard of self-government tomorrow or within a hundred years? No! Are you, therefore, absurd enough to say that he shall have no self-government because he can not do it? Yes! That is your foolish answer. That is exactly the measure of your absurdity. You assert in one breath your superiority to all the world, and then you demand in the next breath that all the world shall measure up to your standard. If anything could disintegrate the confidence which other men have in your standard, it would be your subjective influence toward that dual and contradictory proposition." (*Cong. Rec.*, 64th Cong., 1st Sess., Vol. 53, p. 723.)

of no recorded instance in history where anything of the kind ever took place, and I am confident that nothing of the kind ever did or ever will take place.¹

It is significant that the term "stable government" was seldom used in the debate but that the term "self-government" was commonly substituted for it and seemed to be taken as a synonymous term. Speaker after speaker expatiated on the glories of Anglo-Saxon principles of government, and both sides seemed agreed that the Filipinos had not achieved the high standard set in America. The obvious conclusion to most Republican Congressmen seemed to be an indefinite extension of American control, while to the Democratic members it meant the necessity for applying a relative standard suited to the potentialities of the Filipinos. Occasionally an argument which had been carefully worked up to make the opposition to independence appear to be based on purely altruistic and objective grounds, would be suddenly exploded by the speaker himself when, carried away by his own eloquence, he would wind up in a passionate peroration which fully revealed the subjective elements which had determined his position. Thus Senator Nelson, after a careful analysis intended to show that in the fields of education and agriculture the Filipinos were not ready for independence, concluded with the following revealing statement:

I feel that while I am willing to give the Filipinos as high a degree of self-government as they are capable of exercising, I still want them to exercise that government under the Stars and Stripes. I want a place in those islands where the American people and the American troops, and the American Navy will not be strangers and be driven away from the shores. I want a place in the oriental countries so that when we send our fleets into those eastern waters as we have done for years and as we will continue to do, there will be a haven, a home for our ships, where they can go and be taken care of and meet with the same treatment that they receive of the United States here at home. . . . Let us retain those islands under the American flag. Let Manila become the great commercial emporium of the East for the distribution of American products and American goods. We can become a civilizing power not only for the Philippine people, but for the people in the adjacent islands, in the Malay archipelago, and the people in India and in Cochin China and Cambodia, and for the teeming millions in China.²

¹ *Ibid.*, p. 1447.

² *Cong. Rec.*, 64th Cong., 1st Sess., Vol. 53, p. 1075. Other examples: Senator Sutherland: "Until the new generation has grown up; until they have

Among the many confusing attempts to interpret these criteria of "self-government" and "stable government," was the following statement of Senator Simmons:

Until the people have reached such a stage of development and intelligence and education that they can establish a government in their own interest, to be operated for their own welfare, I do not think they are probably in a condition to establish a stable government. When they do, in that condition they have all the elements necessary to the establishment of a stable government.¹

A more clear-cut interpretation of the phrase was offered by Senator Hardwick, as follows:

I take it, Mr. President and Senators, that the Democratic national convention, when they used the expression "a stable form of government", did not mean a form of government such as could be and would be maintained among the English-speaking and Anglo-Saxon peoples because the probability is that the people of the Philippine Islands might not attain that standard in many, many years, not even in hundreds of years. So that expression, giving it a fair construction, must have meant as soon as those people were capable of maintaining a stable form of government according to their own standards, according to their own environment, according to their own location and among nations in that part of the world . . . My only objection to

been educated in the schools which we have established, and until the English language has become the predominant language in the islands, I do not believe it is safe to intrust independence to those people. . . . To my mind, the greatest blessing that we could confer upon them is to educate them in the English language. It is the language of Anglo-Saxon liberty, the language in which the highest ideals of government have been written, and no people can study and understand that language without understanding to some extent the literature of the language and making a part of themselves those high ideals of government which my reading of history teaches me are the greatest and best that the world has ever known." (*Ibid.*, p. 1554.)

On the other hand, Senator Vardaman arrived at a conclusion favorable to independence through a somewhat similar argument. He said: "The Filipino must not be measured by the Anglo-Saxon standard for the reason that no other race has ever reached the standard of Anglo-Saxon excellency in the art of self-government. But the Filipino is as capable of maintaining a government suitable to his peculiar nature and congenial with his development. . . . No people have ever developed to a high degree the capacity for self-government while they were held as subjects. It is really more a matter of race than education. The illiteracy to-day among the Filipinos, if I have read history right, is not much greater than it was among the Americans when the Constitution of 1787 was adopted, and yet I know it to be a fact that the Filipinos would not be as capable of self-government if every one of them were a college graduate, speaking a half dozen languages, as the Americans were a century and a quarter ago. The fact is I do not believe that the best educated Filipino in the world is as capable of self-government as we practice it in America, as the average illiterate, sane, sound-minded Anglo-Saxon living in the rural districts of this republic. Give the Filipino a chance and he will take care of himself — he will work out his own salvation." (*Ibid.*, p. 1501.)

¹ *Ibid.*, p. 1149.

the legislation is that it does not go far enough, because if those people are entitled to and are worthy of the amount of self-government the Senator proposes to give them in this legislation, then undoubtedly a stable form of government within the meaning of our Democratic platforms at least can be speedily established there . . . From what I have heard on this floor and from what I have read in the hearings, it is doubtful whether there are many peoples in Central or South America, and certainly there are few in Asia or Africa, that have more capacity for setting up, establishing, and maintaining a stable form of government, such as is adapted to them and their needs, than have the people of the Philippine Islands.¹

In spite of the rhetoric and in spite of the mass of confusing and often contradictory statements, two interpretations emerge which characterize the respective parties. The Democratic party and its representatives in Congress interpreted "stable government" as a government capable of maintaining itself in power, of maintaining law and order and administering justice, of fulfilling its international obligations, and of carrying on the normal functions of government *on a level roughly comparable to that attained by nations of a similar type of civilization*. The Republican opposition would accept this interpretation except for the closing italicized clause. They demanded that a stable government for the Philippines should be capable of carrying on all those functions which are normal to the American standard of government and administrative efficiency. The Democratic interpretation prevailed and the bill passed with the preamble affixed. Unfortunately, Congress did not make a forth-right declaration of policy as to this interpretation as the British did in regard to Iraq, so that the same question was to be raised again under Republican administrations.

That this interpretation of stable government was in accord with American practice may be seen from a summary of American recognition policy for over a hundred years, which had consistently demanded evidence of stability but had never demanded American standards of governmental performance.²

The somewhat analogous procedure of admitting new states into the Union is scarcely comparable to the recognition of sovereign States inasmuch as in all but two cases the new states had already existed as politically organized units under American jurisdiction either as territories or as component parts of other states. Furthermore, certain prerequisites of sovereignty would obviously not be applicable. However, certain qualifications demanded as evidence of

¹ *Ibid.*, p. 1251.

² See Chapter V for analysis of the recognition policy of the United States

capacity for statehood and not peculiar to American constitutional provisions are perhaps significant.¹ These are a requisite population, settled boundaries, and popular approval of the state constitution. Various other qualifications and disqualifications have been advanced by Congress or the Executive in particular cases but can scarcely be considered as of general significance outside of the framework of the American Constitution and American domestic policy.² Turning to executive and administrative pronouncements concerning the Philippines, in 1904, Secretary of War Taft said: "When they have learned the principles of successful self-government from a gradually enlarged experience therein, we can discuss the question whether independence is what they desire. . . ."³ Again, in 1907, in opening the new Philippine Assembly:

The avowed policy of the national administration under these two Presidents (McKinley and Roosevelt) has been and is to govern the Islands, having regard to the interests and welfare of the Philippine people, and by the spread of general primary and industrial education and by practice in partial political control to fit the people themselves to maintain a stable and well-ordered government affording equality of right and opportunity to all citizens. The policy looks to the improvement of the people both industrially and in self-governing capacity. As this policy of extending control continues, it must logically and finally end the sovereignty of the United States in the islands, unless it shall seem wise for the American and the Philippine peoples on account of mutually beneficial trade relations and possible advantage to the islands in their foreign relations that the bond shall not be completely severed.⁴

Again, as Secretary of War, he concluded:

Another logical deduction from the main proposition is that when the Filipino people as a whole show themselves reasonably fit to conduct a popular self-government, maintaining law and order and offering equal protection of the laws and

¹ As summed up by Senator Douglas in the debate on the admission of Minnesota: "I do not regard an enabling act as at all essential yet, if the people proceed and make a constitution, and when it comes here we believe it embodies the will of the people fairly expressed, that they have the requisite population, that the boundaries are fair and proper, we may waive the omission of an enabling act and receive them into the Union." (*Congressional Globe*, 35th Cong., Part I, p. 502.)

² Thus admission has been delayed because of allegedly non-republican features such as provisions for recall of judges, suffrage requirements, amendment procedure, etc. Likewise the fear of disrupting the balance of slave and free states or of Republican and Democratic states have been factors of weight.

³ Quoted by Secretary Garrison, *Hearings of Senate Committee on the Philippines*, 1914-15, p. 637.

⁴ *Ibid.*, p. 638.

civil rights to rich and poor, and desire complete independence of the United States, they shall be given it.¹

In the hearings on the Jones Bill, in 1915, Mr. Garrison, Secretary of War, expressed the views of his Department as to the necessity for relative standards in the following words:

I did not imagine we had any idea of establishing an autocracy or an aristocracy, but if your idea is that we must wait until, as, I think, President Taft says, they could all speak English, and all could participate, we should not, I think, like to have that applied to our country. We know in our own national campaigns our national campaign committees print their political pronouncements in six or eight different languages We know that in our own country we are experimenting with that wonderful idea of people being able to blunder along through government, and if we wait for some ideal we will never get any where. We never could in this country I have always understood it was intended to establish a representative popular government, but if I were a judge and somebody told me that I could not issue that decree until I was told there was entire homogeneity, one language, everybody alert to participate, I should say such a government never had existed on earth and, in my own judgment, never would exist on earth.²

After the Filipinos had been exercising the increased powers granted them by the Jones Act, President Wilson made the following recommendation to Congress in 1920:

Allow me to call your attention to the fact that the people of the Philippine Islands have succeeded in maintaining a stable government since the last action of the Congress in their behalf and have thus fulfilled the condition precedent set by the Congress as precedent to a consideration of granting independence to the islands. I respectfully submit that this condition precedent having been fulfilled it is now our liberty and our duty to keep our promise to the people of those islands by granting them the independence they so honorably covet.³

This frank acknowledgment by the outgoing administration that the Filipinos had fulfilled the conditions set by the preamble to the Jones Act as prerequisite to the granting of independence placed the new Republican administration squarely on the defensive. In fact it was alleged that the purpose of Wilson's declaration was to embarrass his successor, but this charge is hardly convincing in view of the Democratic record on this issue and particularly the

¹ *Hearings on H.R. 7233*, House Committee on Insular Affairs, 1931, p. 21.

² Senate Committee Hearings, *op. cit.*, pp. 646-47.

³ House Committee Hearings, *op. cit.*, p. 20.

Administration's approval of the abortive Clarke Amendment in 1916 which would have granted independence within four years. President Harding fell back upon the more rigorous interpretation of "stable government" according to American standards and proceeded to support his position by evidence that the Filipinos were not yet ready to support that level of "stable government". In anticipation of the approaching Philippine Independence Mission, he sent the Wood-Forbes Commission to report on actual conditions in the Islands as they might find them. In his instructions to the Commission, Secretary of War Weeks gave what might have been interpreted as a definite hint as to the findings desired. He said:

The pleasing of the Filipinos of this generation would be a minor satisfaction if it were believed that it would result in the bondage or destruction of the Filipino people for all time hereafter. Whether the result of your investigation may or may not be to the satisfaction of the majority of the Filipino people at this time, I am convinced that, undertaken in the spirit in which it is committed to you and in which you have undertaken it, it cannot but be to the future satisfaction of the Filipinos and must, of necessity, result in their permanent well-being and progress.¹

General Wood, the chairman of the Commission, was reported to have addressed a meeting in the Islands in the following terms:

A stable government means civic courage, courts of justice which give equal opportunities to the Senator as well as to the simple "tao", resources ready for disposal at any moment they are needed by the country, organization which enables the country to defend its integrity, adequate hospitals all over the Islands which are not found in the provinces we have just visited, social organizations which show keen human interest in the protection of the needy and the poor, effective public sanitation, common language, and many others.²

The Commission summed up its findings in the following terms:

We find the people happy, peaceful, and in the main prosperous, and keenly appreciative of the benefits of American rule.

We find everywhere among the Christian Filipinos the desire for independence, generally under the protection of the United States. The non-Christians and Americans are for continuance of American control.

We find a general failure to appreciate the fact that indepen-

¹ MAXIMO KALAW, "Why the Filipinos Expect Independence," *Foreign Affairs*, X, No.2, p. 312.

² *Ibid.*

dence under the protection of another nation is not true independence.

We find that the Government is not reasonably free from those underlying causes which result in the destruction of government.

We find that a reasonable proportion of officials and employees are men of good character and ability, and reasonably faithful to the trust imposed upon them; but that the efficiency of the public service has fallen off, and that they are now relatively inefficient, due to lack of inspection and to the too rapid transfer of control to officials who have not had the necessary time for proper training.

We find that many Filipinos have shown marked capacity for government services and that the young generation is full of promise; that the civil service laws have in the main been honestly administered, but there is a marked deterioration due to the injection of politics.

We find that there is disquieting lack of confidence in the administration of justice, to an extent which constitutes a menace to the stability of the Government.

We find that the people are not organized economically or from the standpoint of national defence to maintain an independent government.

We find that the legislative chambers are conducted with dignity and decorum and are composed of representative men.

We feel that the lack of success in certain departments should not be considered as proof of essential incapacity on the part of the Filipinos, but rather as indicating lack of experience and opportunity, and especially lack of inspection.

We find that questions in regard to confirmation of appointments might at any time arise which would make a deadlock between the Governor-General and the Philippine Senate.

We feel that with all their many excellent qualities, the experience of the past eight years, during which they have had practical autonomy, has not been such as to justify the people of the United States relinquishing supervision of the Government of the Philippine Islands, withdrawing their army and navy, and leaving the Islands a prey to any powerful nation coveting their rich soil and potential commercial advantages. In conclusion, we are convinced that it would be a betrayal of the Philippine people, a misfortune to the American people, a distinct backward step in the path of progress, and a discreditable neglect of our national duty, were we to withdraw from the Islands and terminate our relationship there without giving the Filipinos the best chance possible to have an orderly and permanently stable government.¹

There is no conflict here with the preceding analysis of stable

¹ FORBES, *op. cit.*, II, 542-43; *House Document No. 325*, 67th Cong., 2nd Sess.

government. The two most serious deficiencies alleged are in the administration of justice and in the economic basis for independence, two factors well recognized as implicit in stable government. The disagreement with Wilson's recommendation turns not on principle but on questions of fact. However, a principle is involved and one which we have seen clearly expressed in the British position on Iraq. It is the old question of the degree of attainment which must be achieved along the line of any particular criterion. Wilson believed the degree of attainment reached by 1920 was sufficient; Harding, Coolidge, and Hoover did not. The Wood-Forbes report by its emphasis on the "relative inefficiency" as compared with more rigorous American control, implies that a people must be able to maintain as high a level of administrative efficiency as the controlling power had been able to establish. This position was distinctly repudiated by the British in Iraq. Further the Commission report cited as evidence of incapacity certain failures in terms of ideal standards which, as the Filipino leaders were not slow to point out, had not been realized even in the United States.¹

Under the Coolidge and Hoover administrations the arguments against independence turned increasingly on the economic, military, and psychological factors. In his reply to the Philippine Independence Mission on February 21, 1924, President Coolidge said:

Although they have made wonderful advances in the last quarter century, the Filipino people are by no means equipped, either in wealth or experience, to undertake the heavy burden which would be imposed upon them with political independence. Their position in the world is such that without American protection there would be the unrestricted temptation to maintain an extensive and costly diplomatic service and an ineffective but costly military and naval service. It is to be doubted whether with the utmost exertion, the most complete solidarity among themselves, the most unqualified and devoted patriotism, it would be possible for the people of the Islands to maintain an independent place in the world for an indefinite future In education, in cultural advancement, in political conceptions, and institutional development, the Filipino people have demonstrated a capacity which can not but justify high hopes for their future. But it would be idle and insincere to suggest that they have yet proved their possession of the completely developed political capacity which is necessary to a minor nation assuming the full responsibility of maintaining itself in the family of nations. I am frankly convinced that the very mission upon which you have addressed me is itself

¹ *Infra*, p. 96-98.

an evidence that something is yet lacking in development of political consciousness and capability

One who examines the grounds on which are based the protests against the present situation is forced to conclude that there has not been, thus far, a full realization of the fundamental ideals of democratic-republican government. There have been evidences of a certain inability, or unwillingness, to recognize that this type of governmental organization rests upon the theory of the complete separation of the legislative, executive, and judicial functions. There have been many evidences of disposition to extend the functions of the legislature, and thereby to curtail the proper authority of the executive

Looking at the whole situation fairly and impartially, one cannot but feel that if the Filipino people cannot cooperate in the support and encouragement of as good an administration as has been afforded under Governor-General Wood, their failure will be rather a testimony of unpreparedness for the full obligation of citizenship than an evidence of patriotic eagerness to advance their country Thus believing, I feel that I am serving those same interests by saying frankly that it is not possible to consider the extension of a larger measure of autonomy to the Filipino people until they shall have demonstrated a readiness and capacity to cooperate fully and effectively with the American Government and authorities If the time comes when it is apparent that independence would be better for the people of the Philippines from the point of view of both their domestic concerns and their status in the world, and if when that time comes the Filipino people desire complete independence, it is not possible to doubt that the American Government and people will gladly accord it.¹

In 1926, Colonel Carmi A. Thompson presented his report to President Coolidge after having visited the Islands at the latter's request.² He finds that the Filipinos "lack the financial resources necessary to maintain an independent government"; that they "do not have the homogeneity and solidarity which are prime requisites of a strong, democratic nation"; that the gulf existing between the upper classes "is so wide that no genuinely popular government is possible"; that "the controlling public opinion which is necessary for the support of a democracy does not now exist in the Philippines, nor can it until the daily press and other vital organs of public opinion are very much more widely circulated and read than they are at present." Perhaps the most surprising assertion is that,

¹ FORBES, *op. cit.*, II, 548-553.

² *Senate Document No. 180*, 69th Cong., 2nd Sess.

I learned that all Filipinos, with exception of a small radical minority, really hope for an ultimate settlement of their relations with the United States on a basis which would eventually give them complete autonomy in internal affairs but with the United States directing all foreign relations.

Thompson's next finding makes one wonder if it did not color the entire report as well as reveal a bias which may have preceded his visit to the Islands. He says:

From the standpoint of American commercial interests in the Far East it would be unwise to relinquish control of the Philippines at the present time. Our trade with the Orient has been expanding year by year and all indications point to an increased volume of business for the future. We need the Philippines as a commercial base, and the retention of the Philippines will otherwise be of great benefit to our eastern situation Abandonment of the Philippines at this time might complicate international relations in the Orient.

Referring to the suppression of free trade with the United States, he says:

The Filipino people who, under free trade with America, have been taught the benefits of higher standards of living than they previously enjoyed, would be forced to compete with other orientals having a much lower standard of living. Such competition would without doubt have an adverse effect upon them and upon political and other conditions in the islands America must not abandon these islands to the risks of an independent existence without reasonable preparation to meet the economic competition or the political aggression of stronger nations.

As to the Moro problem, he concludes:

It is my conviction that the southern islands of the Philippines should not be permanently separated from the rest of the archipelago. . . . It should be pointed out however, that the granting of independence at the present time would necessitate the separation of Mindanao and the Sulu Archipelago from the rest of the islands unless the United States were to break faith with the Moros.

In 1930, Secretary Stimson, testifying on the Independence Bill in the Senate Committee hearings, said:

I am opposed, first because it would be disastrous to the Philippine people. I believe that to be true, because I believe the Philippine people are to-day quite unprepared for independence, either politically or economically They can not stand

alone, as I have said, in my opinion, until the development of sufficient revenue to take over, not only the external functions that the United States now performs for them of protection, diplomatic relations, of the mapping and coast surveys of the harbors, but also the revenue necessary for carrying them further along in those steps of internal development, such as education, particularly education, self-reliance, which will be sufficient to prevent the catastrophe from happening that I mentioned before of having a submergence, either by an outside race or by internal anarchy or oligarchy. Now, that proposition is one of the keystones of this problem which this committee has before it, because it is susceptible of mathematical demonstration. If I am right in my belief that the Filipinos need that development, if I am right in my belief that it is necessary to give them the economic power to stand alone, then you can calculate mathematically the minimum time within which they can get the capital necessary to make that development.¹

Secretary of War Hurley took an even more emphatic stand against independence. In fact, in a letter to Senator Bingham, he came so close to repudiating the promise of ultimate independence as to bring forth strenuous protest from Filipino leaders. Mr. Hurley wrote:

An examination of the record leads to the conclusion that no commitment, legal or moral, exists as regards immediate independence or independence within any specific period of years; and no commitment as regards ultimate independence has been found which appears to be more binding than the correlative obligation for the continuation of American sovereignty over the Philippine Islands until the trust which has been assumed, in behalf of the Philippine people as a whole, can honorably be terminated when they are adequately prepared to fully assume the responsibilities . . . of complete independence².

In his testimony before the House and Senate Committees on the Hawes Bill, Secretary Hurley made the following statements:

The political chaos in the Orient to-day is such that in my opinion this is no time to deal with Philippine independence. The present legislation directed to that end would serve the interests of neither the Filipino people nor the United States. Until the Filipino people shall have made greater progress toward economic independence political independence would merely invite revolution and anarchy. All

¹ *Hearings on Philippine Bill*, Senate Committee on Insular Affairs, May 22, 1930, Part 7, p. 665.

² KALAW, "Why the Filipinos Expect Independence," *op. cit.*, p. 314.

the measures necessary for the attainment of economic independence can not be determined in advance. The political and social institutions of the Filipino people are not yet developed to a point where the stability of an independent government would be reasonably assured . . . It was America's hope to plant ideas which would fructify and finally perpetuate a system of government of which the United States is the great exponent. As a necessary corollary, standards of civilization and living were to be in a constant state of progress The attempt was made to set up a self-governing, self-subsisting, self-sufficient member of the family of nations. The program laid out to accomplish that was, first, to provide an intelligent public opinion capable of establishing self-government; to assure the economic self-sufficiency of the Islands in order to support such a government; and to alter and up-build the social structure so as to support the two former . . .

. . . while the political aspect has been stressed, the social and economic obligations undertaken by the United States have not been completed. Without that, as I will show before I finish this argument, to relieve ourselves of that responsibility now would be destructive to the reputation of the United States and to the welfare of the Filipino people . . . The period to elapse before complete independence should be granted should be outlined, if at all, in terms of objectives rather than in terms of years. The concrete objectives should include both the definite relief of the United States from any degree of responsibility to the holders of obligations of the public debt of the government of the Philippine Islands and the presentation of satisfactory evidence that an independent Philippine government would be able to meet the necessary costs of government under the conditions which an independent status would presumably entail . . . There is an evident confusion in the minds of the great mass of the Filipino people as to the distinction between self-government and absolute independence from the United States. It is difficult to realize that the steady and vociferous clamor for complete independence does not represent the fundamental sentiment of the Filipino population. Most of the more intelligent people appreciate fully the risks that would be incurred by the whole population if immediate independence were granted . . . still by reason of political propaganda alone, the opinion of the Filipino people has been consolidated not only against the continuance of the United States in the islands but against any leader who would dare oppose that sentiment . . . Freedom of speech is not permitted . . . The condition does not prevail in any one place in the islands, it prevails throughout the islands. No man is permitted to express his views on this subject if they do not coincide with those expressed by these leaders

Complete and effective self-government on the basis of popular representation will not be possible until there is

developed, as a constructive influence in public affairs, a more informed and influential public opinion than now exists in the islands. A present obstacle to such development is the seriously restricted freedom of speech that obtains, particularly in the expression of views in opposition to those of the dominant leaders. Continued progress in general education is mandatory.¹

In his veto message on the Philippine Bill in 1933, President Hoover stressed the economic and military arguments and by his prophecies as to the dire results to be anticipated from passage of the bill, implied general incapacity for self-government. He said, in part:

Unfortunately for these people, their economic life to-day and for many years to come is absolutely dependent upon their favored trade with the United States. Many of their industries can not compete with the lower standards of living and costs in other tropical and subtropical countries, except by virtue of their favored entrance to our markets. Lands now employed in these products must be abandoned or alternatively all real wages and standards of living and all land values must be reduced to the level of other competing countries. Consequently, capital invested in large industries, the security for mortgages held by their banks, their insurance companies, their other institutions must be greatly reduced, the financial system of the islands endangered, a flight of capital must ensue, the ability of the people to pay taxes undermined, the government revenues diminished, and its ability to maintain its obligations and to maintain public order will be weakened . . .

Our Government, with inadequate civil means for exercising its sovereign authority to control the situation but with continued moral responsibility to maintain stable government, will daily during those years be faced with the likelihood of having to employ military measures to maintain order in a degenerating social and economic situation, or, alternately, to expend large sums from our taxpayers in supporting a constantly enfeebled government. Not alone do these difficulties arise from the intermediate situation we create, but the non-Christian population, who are as yet bitterly opposed to the controlling group . . . The income of the Philippine government has never in the past been sufficient to meet, in addition to other expenditures, the cost of supporting even the Filipino Scouts, much less an army or navy . . . Nor has the spirit of imperialism and the exploitation of peoples by other races departed from the earth. After the establishment of independence the Filipino people alone will be helpless to prevent such infiltration or invasion . . . Other nations are unlikely

¹ Senate Committee Hearings, *op. cit.*, Feb. 11, 1932, pp. 7-44.

to become parties to neutralization if we continue such bases (naval) and neutralization is a feeble assurance of independence in any event unless we guarantee it . . .¹

Perhaps the best condensation of the opinion opposed to that just presented is in the reports of the House and Senate Committees in recommending passage of the bill, a viewpoint which prevailed in Congress, even to the extent of passage over the presidential veto. Thus the House Committee reported:

It is believed that a stable government now exists in the Philippines; that is, a government capable of maintaining order, administering justice, performing international obligations, and supported by the suffrages of the people . . . To a great extent the government of the islands was placed in their hands. This active, responsible part in making and administering their laws and in conducting their other public affairs has been for them a practical apprenticeship in self-government . . . Political parties are not merely organs for the expression of hopes, proposals, and demands with respect to government; they are also measures of the popular capacity to understand and differentiate political, economic, and moral issues. Still more are they a test of people's fitness for self-government if they stand for the sanctity of the ballot and insure full acquiescence in the will of the majority honestly and unmistakably expressed . . . Popular education is everywhere and always a stimulus and assistance to popular interest and participation in government . . .

Our purpose in the Philippines has been accomplished. The unity of the people there is a fact. Their readiness and their eagerness for self-government have been abundantly demonstrated. Their financial capacity to support their government is beyond question. They have a balanced budget, a stable currency, a sound and efficient administration of justice, a successful system of public instruction. They have sanitation, communications, and all other services which are indispensable to progressive and orderly government. They maintain law and order through their own instrumentalities and assure protection to their own citizens and the nationals of other countries. Their educational and economic standards are higher than those in other countries in that part of the world. Under our inspiration and tutoring they have come to understand and prize and covet democracy.²

This report sums up the arguments advanced on both sides as to the factors or criteria which should be examined in determining the readiness of the Filipinos for independence. The report of the Senate Committee goes over them again adding some interesting

¹ *Cong. Rec.*, 72nd Cong., 2nd Sess., pp. 1759-61.

² *Ibid.*, pp. 12820-23.

comments of its own with regard to certain of the criteria advanced. Thus the Committee flatly denies the charges of a divided public opinion on the question of independence,¹ finds ample evidence of adequate leadership and administrative ability for the maintenance of the public services,² and considers the dangers from minority disaffection to be slight.³ With reference to the economic argument the report of the Senate Committee finds the situation calls for a

¹ "Your committee desires to call attention to a propaganda intimating that the Philippine leaders are not sincere in their demand for independence. If there is any basis for this intimation, your committee has been unable to locate it. It is insinuated that the Philippine people do not actually desire independence, and that their leaders do not really favor it, and yet, in reply to this propaganda, there comes from the entire press of the Philippines, from all classes of its population, from its school children and its public officials, from the representatives of its political parties, majority and minority, a demand for independence. Not a single witness before your committee could name to Filipinos who do not favor independence. The business organizations of the islands, their national conferences, their educators, their government officials, their economists have all declared for independence. The Philippine press, the Philippine public, the Philippine pulpit, the Philippine school, and the Philippine industries, seem, so far as we can ascertain, to be unanimous in the demand that the United States redeem its pledges to grant to these people the sovereignty to which they aspire." (*Ibid.*, p. 12809).

² "Whatever may have been our Government's influence in the matter, the fact is that noted authorities have complimented the Philippine governmental agencies upon their efficiency and capacity and have commented as well upon the widespread participation of the people in the elections held in connection with governmental functions. Nor was there any evidence further than that cited to indicate that permanent stable government is or will be menaced by racial or tribal differences. The witnesses before your committee, whatever their views as to what should be done with the Philippines, did not criticize the manner in which the Philippine Government is being managed by Filipinos, and some were high in their praise of both the efficiency and intelligence manifested by those in charge of Philippine domestic affairs." (*Ibid.*, pp. 12811-12).

³ "Joined with the argument that there is some doubt as to the ability of the Filipinos to manage their own affairs is the frequently asserted statement that there exists a diversity of tribal interests, antagonisms, and prejudices which would militate against the maintenance of a stable government. The facts, as given to your committee, do not bear out the statement It is further testified that these Moros belong to the same racial blended stock as do other Filipinos, the Malays; that they are sending their children to the public schools of the islands; that they pay their taxes; and that they unite in the demand for independence." (*Ibid.*)

The House Committee had reported on this point that "there is no substantial evidence that these Moros and others have protested against Christian preponderance in the government. The contention that the United States is obligated by a treaty with the Moros to see to it that they should not be governed by Christians was negatived by the statements of W. Cameron Forbes, former Governor-General and member of the Wood-Forbes Commission; Frank W. Carpenter, former governor of Mindanao and Sulu; and General Pershing under whose supervision the Moros were disarmed. Finally the Committee were informed that one of the Moro datus, Facundo Mandi, had recently led a public manifestation of Mohammedan Filipinos in behalf of independence at Zamboanga. A resolution favoring complete and absolute independence, it was testified, had been drafted by the manifestants and transmitted to the President of the United States. A resolution favoring independence for the Philippines, bearing the signatures of some 1,500 Filipinos from the Mohammedan section of the islands, also was submitted to the committee." (*Ibid.*, p. 12822).

speedy rather than delayed settlement of the independence issue; while in matters of defense it finds little military value in the connection with the United States.¹ The Committee holds that to defer the granting of independence merely from the fear of stimulating the desire for independence on the part of other dependencies in the Orient "would be to recognize an unsound philosophy or policy repugnant to the very best traditions of our Nation."

Summing up the various criteria which have been cited in the argument of the proponents and the opponents of independence, one finds substantial agreement as to the nature of the criteria to be set up, but profound disagreement as to the level of achievement

¹ "We must not forget American interests and American welfare. But your committee, having obtained all the facts in relation to our trade with the Philippines, finds in this information rather a powerful argument for some immediate disposition of the Philippine question than a reason to decide the matter of Philippine independence from the standpoint of either exporter or importer It is pertinent, however, to state that the growing free exchange of products between the islands and the United States, if permitted to go on at the present rate of increase, will tend to develop a commercial relationship strong enough later to submerge every other consideration in the problem of Philippine independence It is evident that if this trade relationship is permitted to continue increasing the number and strength of commercial ties between the two nations, the time will rapidly come when a change in the status of the Philippines, however desirable it may be from a national, military, or humanitarian standpoint, will mean economic ruin to the Philippines themselves and an unquestionable detriment to Americans. Your committee therefore believes that instead of resolving the Philippine question on the basis of commerce, the conclusion to be drawn is that the whole problem must be settled as quickly as its importance permits, and this growing relationship between Americans and Filipinos be given a permanent foundation. As far as the Philippines are concerned, it is with reason that they maintain that the disruption of present relationships now will subject them to hardships which they can more readily endure at present than at some future date when their economic dependency will be greater We are told that our retention of the Philippine Islands has a beneficial effect on our intercourse and trade with the Orient. But there is no evidence to conclude that a continuation of our sovereignty over the Philippines will be conducive to oriental friendship. The result may reverse what the advocates of retention now call our strategic position for trade in the Orient.

"No fundamental reason is found for refusing independence to the Filipino people because of correlated oriental problems. We attach hereto as a part of this report the 3-party agreement or treaty which limits our fortification of the islands as a matter of defense. In the absence of fortifications precluded by this treaty, no naval or army authority will deny that the Philippine Islands could not be held against a strong enemy for any reasonable length of time There is serious doubt as to their utility to us in the event of armed conflict. [They probably would be a liability so long as the 3-power treaty is operative. . . . In their present state of preparedness the Philippine Islands would be useless as a post of defense. . . . These islands, once they were captured, it is generally agreed, could hardly be retaken by us for at least two years and then only at the cost of an immense amount of money in war expenditures and after the loss of hundreds of thousands of lives. . . . The 3-party treaty with Japan was a far-reaching decision and leaves the Philippine Islands, so far as the Army and Navy of the United States are concerned, in an unprotected condition which can not be changed while this treaty remains in effect". (*Ibid.*, pp. 12812-13).

to be necessary. Ignoring the arguments as to the political expediency of granting independence regardless of capacity, one finds the following criteria cited by both groups: a public opinion desirous of independence, an intention and capacity to fulfill international obligations, capacity to maintain independence and territorial integrity, a stable government as indicated by the following factors – maintenance of internal order and security, sound administration of justice, balanced budget and sound fiscal system, efficient administrative services particularly in public health, communication, education, and public works. The percentage of literacy, the degree of active participation in the suffrage, the attitude of and toward minorities, the standards of the civil service were likewise cited. The most important consideration in the debates of recent years has been the item of economic independence, so-called, or the economic capacity to support the stable government required.

Relative agreement seems to exist that these factors are all related, in varying degrees, to the question of capacity, but here unanimity ceases. One can hardly say that there has been any distinctly American policy on this question; rather there have been two policies which have alternately dominated the government's attitude on this question at different times according to the party in power and to the shifting balance of power between the Executive and the Legislature. In general these have been denominated the imperialist and anti-imperialist policies and they have tended to characterize the Republican and Democratic parties respectively. While both parties have given lip-service to the promise of eventual independence, the Republicans, as a whole, have consistently adopted an interpretation of the criteria of capacity in terms of such a high level of achievement as to postpone indefinitely the consideration of independence while the Democrats have tended to a relative rather than an absolute standard. It is significant that the first formal commitment to a promise of even eventual independence was made by a Democratic administration in the Jones Act of 1916, that the succeeding Republican administrations repeatedly discouraged the independence movement and that its special investigations of Philippine capacity were increasingly unfavorable, that the bill for a plebiscite on the independence issue, passed incidentally to meet Republican charges of a lack of unity, was vetoed by a Republican president, that the Independence Bill of 1933 was finally passed by a Democratic Congress over the veto of another Republican president. The long record of party platforms, Congressional debates, and executive and administrative pronouncements would seem to

show clearly that the question of Philippine independence has become a partisan issue in American politics.

As between the executive and legislative branches of the government there seems to have been a considerable, though less marked, divergence in policy. In general the legislative branch has taken a more liberal view than the executive. Thus the Senate resolution of February 14, 1899, denied any intention of permanent annexation, a more advanced position than that of the famous proclamation of "beneficent assimilation" of McKinley in the same year.¹ In 1907 a Senate measure proposing that independence be granted upon the establishment of a stable government was defeated in the upper House.² In 1912, a House committee favorably reported a bill providing for complete independence in 1921, but the measure never came to a vote in the House.³ In 1916 the so-called Clarke Amendment to the Jones Bill providing for independence in from two to four years passed the Senate and lacked only twenty-five votes for passage in the lower House. President Wilson had at first opposed this amendment on the grounds of possible inexpediency in view of the world war situation, but gave his approval after provision was made for a possible extension of the maximum time limit.⁴ In 1924, according to ex-Governor-General Forbes,

the Secretary of War found the House and Senate committees concerned with Philippine affairs strongly inclined to recommend cutting the Islands altogether adrift, and he was led to believe that a measure carrying with it complete Philippine independence, with no obligation of the United States to care for the Islands, might be passed.⁵

To forestall such action, the Administration sponsored the introduction of the Fairfield Bill providing for a "supervised republic" and a plebiscite on the question of independence after thirty years; however, the bill was opposed by the Filipino leaders because of the thirty-year provision and never reached a vote in the House. The Wood-Forbes, Thompson, and Hurley reports were increasingly hostile to independence, and this attitude was clearly reflected in the message of Coolidge to the Philippine Independence Mission and in his veto of the plebiscite bill, as also in Hoover's veto of the 1933 bill.

¹ FORBES, *op. cit.*, I, 81.

² Cong. Globe, 59th Cong., 2nd Sess., p. 3896.

³ FORBES, *op. cit.*, II, 372.

⁴ KALAW, *Philippine Politics*, pp. 342-44.

⁵ FORBES, *op. cit.*, II, 373.

An interesting change has taken place in the criteria emphasized during the long period in which Philippine independence has been an active issue. The early debate centered around the capacity of the Filipinos for the maintenance of a stable government in its purely political aspects, but as they have increasingly demonstrated their capacity along these lines, the argument of the opponents of early independence has shifted to the economic ground and even to the still more vague psychological implications of democratic government. Both sides have advanced their particular economic arguments as being not only in the interest of the American people but of the Filipinos themselves, the one by an emphasis upon the disastrous effects of a sudden cessation of present free trade relationships, the other by claiming that the longer such a change is delayed the more disastrous will be the economic repercussions in the Islands. The sincerity of the former in emphasizing the economic consequences of early separation and at the same time doing lip-service to the promise of eventual independence is open to question in view of their support of the existing arrangements which will undoubtedly increase Philippine economic dependence upon the United States.

The arguments of the two parties as related to American interests in the Philippines is likewise of interest. The Republicans have tended to support the vested rights of Americans in the Islands, the holders of Philippine bonds, the export interests engaged in the Philippine market, and to enlarge upon the assumed military and naval advantages of the Islands to the United States, their necessity as a "commercial outpost" in the Orient and their importance in maintaining American prestige. The Democrats, on the other hand, have tended to deny the existence of any special rights on the part of investors who had had full knowledge of the temporary character of the American connection, to consider the Islands a source of weakness from the military point of view and of no real value to commercial intercourse with the Orient while their retention in the face of the Filipino demand for independence would destroy any prestige which America had acquired in the Orient by her otherwise admirable record in the Islands.

In comparison with British policy with regard to Iraq, two marked differences are evident: the one, the lack of any consistent policy throughout regardless of the party in power, and the other, the emphasis in the policy of the party which has been in power through most of this period on an absolute standard of achievement comparable to that which could be maintained by the controlling power. The factors recognized as criteria of capacity for

independence in the two cases are strikingly similar, but the American Government has tended to require a higher level of performance than the British.¹

Turning to a consideration of Philippine opinion, one finds that the literature of the Philippine independence movement abounds in evidence that the Filipinos had a highly developed political self-consciousness and fully rationalized objectives long before the American occupation. The long struggle for reform under the leadership of Del Pinar and Rizal failed, but the manifesto of Aguinaldo on July 7, 1897, summed up the aspirations which had inspired the early reformers as well as the revolutionists.

We make no racial discrimination; we call upon all who possess honor and the sense of personal dignity; the Filipino, the Asiatic, the American and the European all alike suffer; and we invite all those who suffer to aid in lifting up a fallen and tortured people, a country destroyed and sunken in the mire of abasement Look at the law trampled under foot, converted into a weapon to be used against rather than in defense of the Filipinos; on all sides threats and bribes. The municipality degraded; the administration and treasury ruined by immorality and speculation. In the government and high offices of the State, where the native is barred from holding office, arbitrary rule prevails, individual security depending not on natural right, but on the irresponsible will of any of those in authority. Error and deception is the motto of public instruction; in the schools and the press absolute tyranny; on all sides ignorance, dishonor, vice and corruption Mindful of the common good, we aspire to the glory of obtaining liberty, independence and honor for the country. We aspire to have a common law, created for all citizens, which will serve as a guarantee and assurance of respect, without exception. We aspire to have a government which will represent all the active forces of the country, in which will take part the most capable, the most worthy in virtues and talents, without regard to their birth, their wealth or the race to which they belong . . . In our ranks order shall always be respected. Under our flag justice will always govern. Worthy sons of that liberty which has been so iniquitously snatched away from us, we shall show the world that we are worthy of having our own government—our own country as we have our own language.²

The Filipino claim to independence was based on the doctrine that sovereignty lies in the people and that the Filipino people had, by force of arms, recovered their sovereignty from the

¹ Cf. *supra*, Chapter II.

² KALAW, *Philippine Politics*, pp. 90—91.

Spaniards. The Independence Proclamation of June 12, 1898, after reciting the various achievements of the insurrectionary forces, continues:

The city of Manila will soon be completely besieged by our forces, and also the posts in the province of Nueva Ecija, Tarlac, Pangasinan, Union, Zambales and several others in the Visayan Islands, where insurrection has broken out in several of their towns, having started in some almost at the moment of completing their pacification, and in others even before that, wherefore the independence of our territory and the recovery of our sovereignty are assured. And summoning as a witness of the rectitude of our intentions, the Supreme Judge of the Universe, and under the protection of the Mighty and Humane North American Nation, we proclaim and solemnly declare, in the name and by the authority of the inhabitants of all these Philippine Islands, that they are released from all obedience to the crown of Spain; that every political tie between the two is and must be completely severed and annulled; and that, like all free and independent states, they have complete authority to make war, conclude peace, establish treaties of commerce, enter into alliances, regulate commerce, and execute all other acts and things that Independent States have the right to do . . .¹

The Filipino leaders consequently denied the right to Spain to cede the sovereignty of the Philippine Islands to the United States, claiming that such sovereignty had already been lost by Spain and that the United States could not therefore claim such sovereignty by right of cession but could establish it only by conquest. Thus the members of the mixed commission appointed by General Otis in 1899, asserted on behalf of the Filipino people that

sovereignty is inalienable, and is vested directly in the people; and as at the historic moment of the cession of the archipelago the Philippine people, satiated already with injustice, had definitely expressed as their will their desire to exercise and were exercising their own sovereignty, destroying with their arms the dominating power, and establishing a government through which it has manifested said sovereignty to the world with the exercise of full jurisdiction, the right of the Philippine people to be respected is indubitable, even though the government established by them to preserve social order were not officially recognized; and their non-recognition as a belligerent is not an obstacle thereto. All countries born of a colony, and later established as a nation by their own will, with or

¹ *Ibid.*, pp. 414—15.

without the assistance of foreign peoples, have found themselves in a like situation.¹

A noteworthy feature of the Filipino argument is that it has not based its claims to independence solely upon the doctrine of self-determination and the evidence of a practically unanimous desire for independence, but has frankly recognized the validity of the argument as to capacity and has based its claims upon an assertion of such capacity on the part of the Filipino people. It is significant that long before the American Government had elaborated the factors to be considered as criteria of capacity, the platform drawn up by the Nationalist Party in 1907, specifically listed many of the criteria which have been enumerated in the preceding pages and asserted the competence of the Filipino people for self-government under such standards. This document is well worth careful consideration.

We, the undersigned citizens of the Philippine Islands, for ourselves and for those countrymen who shall ratify this document, proclaim that we do hereby constitute a 'political party called *Partido Nacionalista*, whose ideals and purposes are contained in the following principles and declarations:

The party, believing that it interprets the true and just aspirations of the Filipino people, proposes:

The attainment of the immediate independence of the Philippine Islands to constitute it into a free and sovereign nation under a democratic government, without prejudice to the adoption in due time of any form of guarantee which would be convenient to the interests of the Filipino people and suitable to the circumstances.

This purpose is founded upon the natural and evident right that peoples have to their independence, and on the fact that our people, as was shown in the struggles and revolutions which they have maintained, desire and are ready to receive at any moment their independence.

The Filipino people from time immemorial have possessed a civilization which has been improved through living and contact with the Spanish people during more than three centuries of sovereignty and also through the present contact with, and practices of, the systems and institutions of the American people. Like other cultured peoples of the world, they have assimilated many elements of culture without losing thereby their typical characteristics and it is for this reason that they believe themselves capable of maintaining a decent and orderly government such as is required by their collective interests and their relationship with other nations. It is a proven fact that they managed their affairs wisely and peacefully during the brief period of their independence.

¹ *Ibid.*, pp. 173—74.

We do not consider the variety of ethnic families or the diversity of dialects an obstacle to the maintenance and enjoyment of self-government or independence, since at the present time all the Filipinos consider themselves members of a common country united by their common origin and birth inasmuch as the diversity of tongues has not embarrassed their relations as it has not embarrassed other nations which also include districts speaking different dialects.

Our people are thoroughly adaptable to democratic institutions and have men with sufficient wisdom and intelligence to organize a stable self-government, and wealth and natural resources sufficient to maintain an economical public service, the more so when it is hoped that under their own laws the material conditions of the islands will develop and increase satisfactorily for the benefit of the Filipinos.

Filipino individuals and societies have at all times shown a decided love for order and unbroken respect for law; therefore it cannot be presumed that the establishment of self-government in the country would lead to disorders and internecine strife, much less when what is proposed to be established is a regime desired by all parts of the Philippines.

The dismemberment of any portion of our territory, as it was described in the Treaty of Paris, is a challenge to our national integrity and the *Partido Nacionalista* will consider it its duty to oppose any such intent or purpose and to work for the conservation of the entire territory for ourselves and our descendants.

It is our firm conviction that the peace, order, progress and happiness of a people can be happily realized only through self-government, for nobody knows the needs of a country better than its own people, or can better apply to them the most adequate remedy.

Our aspiration is just, noble and incontrovertible, because it is born of the natural desire for emancipation and it is based on eternal principles of justice which animate all people who feel able to govern themselves, and we have not the least doubt that this is the solution which would most assuredly and lastingly consolidate the moral and material peace of our country.

With such purposes the party will work constantly for the attainment of the aspirations of the country by peaceful means within the pale of law, struggling for everything that would redound to the benefit of Filipino interests and which the party will continue to follow even after the country is free and independent.¹

The importance of the political capacity of the people is here frankly assumed in the reference to the cultural background, the Filipino capacity for "maintaining a decent and orderly government,"

¹ *Ibid.*, pp. 304-6.

the adaptability "to democratic institutions," and the existence of capable leaders. The need for unity is recognized, its existence to be determined *de facto* rather than by implication from the existence or non-existence of ethnic and linguistic differences. The fulfillment of international obligations, the necessity for stable government, the importance of economic resources are likewise mentioned. It is significant that no attempt is made to deny the pertinence of any of these criteria to the question of capacity. This position has been maintained throughout the long struggle for independence, the Filipino leaders accepting the criteria advanced by the American Government and asserting the Filipino people have fulfilled the requirements thereof. This position has been consistently reiterated in the declarations of party platforms, in resolutions of the Philippine Legislature, in statements of authorized spokesmen in Washington.

In 1908, the Philippine Assembly endorsed the closing remarks of Speaker Osmena in which he said:

... our people consider themselves capable of leading an orderly life, efficient for themselves and for others, in the concert of free and civilized nations, and that we believe that if the people of the United States were to decide at this moment the Philippine cause in favor of the Filipinos the latter could, in assuming the consequent responsibility, comply with their duties to themselves and to others, without detriment to liberty, to justice and to right.¹

Again in 1912, the Assembly resolved:

We are convinced that each step taken, while relieving the American Government of its responsibilities in the islands, will fully demonstrate, as in the past, the actual ability of the Filipino people to establish self-government, and under such government guarantee permanently the life, the property, and the liberty of the residents of the islands, whether native or foreign.²

And in 1915:

The result of the reform extending popular control in provincial government has demonstrated that the hopes of success of those responsible for this measure, adopted because of full confidence in the capacity of the people, has justified this action. The confidence of the Government of the United States has been also fully justified by the result of extending Filipino control in the Insular Government. Notwithstanding that the tumult of the world's greatest war still continues, and that everywhere the effect has been felt in financial and economic crises, yet in spite of the limited resources of our

¹ *Ibid.*, p. 460.

² *Ibid.*, p. 462.

government and the continuing limitations of our commerce, the government of the Philippine Islands has successfully met its every necessary expenditure without resort to additional loans either from the United States or foreign governments.¹

Speaking before the House Committee in 1932, the President of the Philippine Senate, Sergio Osmena, raised the question of the meaning of stable government in the following terms:

What constitutes a stable government has a clear and accepted meaning in American international relations, and especially in her relations with Cuba. In substance, it is a government supported by the suffrages of the people, capable of maintaining order and performing its international obligations. Such a government exists in the Philippines today. It is practically in the hands of Filipinos and Filipino officials. A grant of independence will not require radical changes in its structure. Unless other forms of government were attempted, all that would be needed would be the election of a new executive. In the course of these hearings we shall attempt to submit facts and figures showing that this claim that a stable government now exists in the Philippines is well founded. Among other things, we shall submit information concerning public order, the administration of justice, cultural progress, political capacity, health and sanitation, Government finances, and currency stability ²

Speaker Roxas summed up his argument before the same committee in the following terms:

The building up of the Philippine nation is done. We do not contend that the Filipinos have reached the highest peak of progress and culture and economic advancement attainable, but we believe we have reached the limit of progress, advancement, and education in democracy that we can achieve under American guardianship. The remainder we must learn by ourselves through the proven process of trial and error. We have built up a homogeneous, united people. We have developed political institutions responsible to public opinion and democratic in form. We have maintained a stable and sound currency. Our government finances are in a firm and healthy condition. Public order exists to a degree which surpasses, I dare say, that which prevails in many of the independent nations of the world. What else is there to be done? We have gone through the training, passed the tests, and now merit freedom.³

In his advocacy of the capacity of the Filipinos for independence.

¹ *Ibid.*, p. 465.

² House Comm. on Insular Affairs, 1932, *op. cit.*, pp. 6-7.

³ *Ibid.*

Speaker Roxas had touched on the maintenance of public order, education and literacy, health and sanitation, the civil service, the administration of justice and the penal system, the currency, trade relations and economic development, government finances, means of communication, and the minority problem of the Moros. Frankly recognizing the pertinence of each of these to the consideration of capacity, he asserted that a reasonable degree of achievement had been demonstrated in terms of each such as to justify the claim of a readiness for independence.

Thus the Filipino argument is predicated upon the adoption of a reasonable standard of achievement and the principal difference between the view of Filipino and American leaders has been as to what constitutes such a standard. This problem has been particularly discussed with regard to the three criteria of literacy, capacity for self-defense, and economic capacity. On this point, Manuel Briones, a member of the Independence Mission, declared:

When Cuba became independent 66 per cent of its population did not know how to read or write, according to the census taken at the time. In the Philippines the illiterates are only 30 per cent. The Philippines has a higher percentage of literacy than 36 of the 57 independent nations today Among the arguments which opponents of Philippine independence adduce is our alleged inability to defend ourselves from external aggression. They assert that the Philippines should make herself so strong as to be able to repel invasion. If this test were applied to all the nations of the world how many countries would be entitled to independence. Not more than six or seven. The peoples of Switzerland, of Denmark, of Sweden, of Norway, of Holland, and of many South American countries would not be able to pass the test and would become mere colonies of the strong. But we assert that inability is not a proof of incapacity (for independence), as a distinguished authority on international law has stated: "The inability of some nations to stand alone under the existing conditions would be evidence of the unfitness of those powers which make the world unsafe for weaker peoples rather than that of the unhappy peoples who are the victims of international disorder and violence."¹

At the same hearings, Speaker Roxas asserted:

With regard to the protection of the Philippine Islands the United States has already adopted a policy. In the Washington treaty, for example, the United States agreed not to fortify the Philippine Islands any further. It has been shown by the utterances of President Roosevelt and many

¹ *Ibid.*, 1930, pp. 25—26.

naval experts that in the event of war it is the intention of the United States to abandon the Philippine Islands. So that, even while under the American flag, there is really no protection for us, except American prestige. The arm of the American navy does not reach us. We believe that if we were entirely free from the United States we would be better protected under the League of Nations than we are now.¹

In answer to Secretary Hurley's criticism of the lack of a comprehensive program for Filipino economic development, the Independence Mission replied:

Beyond the scheme proposed in the Hawes-Cutting bill and in the Hare bill covering economic relations, it is not intelligently possible to formulate another program, nor should it be required as a condition precedent to congressional action on these bills. Of no country in the past aspiring to independence has this been considered necessary. The United States, upon the declaration of independence, did not even consider such a problem. Cuba was not required to do so before the withdrawal of American sovereignty Our economic soundness today is not disputed. It is demonstrated by the fact that we are maintaining a balanced budget, a stable currency, and have not had difficulty in providing for the payment of the national debt at a time when more powerful countries can not show similar conditions.²

Referring to the letter of President Coolidge to Governor-General Wood explaining his veto of the Plebiscite Bill, Dr. Kalaw, Dean of the University of the Philippines, writes:

The standard here described is absolutely elastic. It may mean requiring 90 per cent of literacy, the establishment of a public opinion to the extent that obtains in England and America, or the existence of as intelligent a democracy as that of Switzerland We consider the elaborations and amendments made by Secretary Weeks, Governor Wood, President Coolidge, and lastly by Secretary Hurley as unfair and unwarranted. They do not find any Congressional sanction. They range from the establishment of an ideal democracy and the building of more hospitals to the formation of a government that will stand up against the most powerful foreign aggression and prevent all economic penetration. We submit that no nation on earth can qualify under each and every one of these conditions.³

Summing up the Filipino argument, one finds practically a duplication of the American criteria, a unified public opinion,

¹ *Ibid.*, p. 15.

² *Ibid.*, 1932, p. 48.

³ KALAW, "Why the Philippines Expect Independence," *op. cit.*, p. 315.

capacity to fulfill international responsibilities, to maintain independence and territorial integrity, to establish and maintain a stable government. And the following facts are directly or impliedly recognized as pertinent to the determination of such capacity: the state of internal order and security, the administration of justice, the budgetary and fiscal system, the various administrative services and particularly public works, communications, public health and sanitation, and education, literacy, the suffrage and its exercise, minorities, and economic resources. But where the American argument has tended to shift its emphasis from questions of organization and procedure to psychological characteristics and economic resources, the Filipinos have stressed the former and while not ignoring the latter have emphasized their relative nature. Where there has been an increasing insistence in America that "economic independence" must precede "political independence," among the Filipinos it is claimed that under the *status quo* economic independence can never be achieved, that it can only follow political independence, and that in the extreme form in which it is sometimes defined it is not even essential to political independence.

Throughout the Filipinos have denied the validity of an absolute standard of achievement to be set in terms of the level of attainment of the most advanced nations. They assert that the standard should be relative to the minimum requirements for an independent national life and in harmony with the widely varying standards actually existing among the independent nations at the present time. American opinion would seem to be divided on this issue, but, as we have seen, the British Government and the Permanent Mandates Commission definitely took this stand in regard to the emancipation of Iraq.

An analysis of the protracted and voluminous debates on the question of Philippine independence leaves one with the conviction that in spite of the elaborate argument in terms of the various criteria of capacity and without questioning the sincerity of many of the disputants in their views as to the existence or the lack of the necessary capacity — that the determining factor was really political expediency as variously interpreted by the different individuals participating in the final determination of American policy with regard to the Philippines. Likewise, the Filipinos, while undoubtedly convinced of their capacity to maintain an independent existence in terms of the criteria considered, are still more powerfully influenced by their belief that regardless of such capacity, self-government is more to be desired than good government, and that every people have the right to determine their own future.

CHAPTER IV

CRITERIA IN INDIA

In India, the search for criteria of capacity faces a somewhat anomalous situation inasmuch as the membership of India in the League of Nations would seem to constitute the recognition of India's status as an independent nation. At the same time, India does not yet have even the complete Dominion status within the Empire which is the immediate goal of Indian Moderates, let alone the absolute independence for which others are pressing. In view of this situation, it is not improbable that a different set of criteria might be found to be applicable for determining capacity for self-government within the Empire, from that applied where absolute independence was the issue. The complete autonomy involved in Dominion status today has been reached by such gradual stages that it never called forth any searching examination of the criteria of capacity for such extensions of self-government as have taken place in all the Dominions.

It has been a peaceful progress, concessions by the Imperial Government following naturally on the development of the colonies in population, in wealth, and in sense of responsibility; The Imperial Government, once it had accepted in practice the guidance of Lord Durham, had no desire to deny the benefits of the new system to any territory which could fairly be deemed worthy to exercise responsibility.¹

Evidence of ability to sustain the smooth and efficient operation of the machinery of government was the primary consideration.² The geographical and political situation of the Dominions relegated the problems of external relations and defense to the background. But when India demands the same status the question is raised whether political conditions in India are comparable with those attained in the other colonies before Dominion Status was achieved, whether India is yet ready to undertake the obligations of responsible self-government. Thus the complications of the Indian situation have called forth new questions as to what constitutes capacity for self-government whether as an autonomous unit in the British Empire or as an independent State.

¹ A. BARRIE DALE KEITH, *The Sovereignty of the British Dominions* (London, 1929), pp. 38-39.

² *Ibid.*, pp. 40-41.

While the British connection in India long antedates the assumption of direct political control by the British Government, it is only with the events subsequent to the transfer to the Crown that we are here concerned. In fact, it is only within comparatively recent history that Indian Nationalism has constituted a truly national movement. The first evidence of the effects of Western contacts and influences appeared in the religious rather than the political field and were marked by the rise of the Brahmo Samaj, the Arya Samaj, and the Theosophical Society. While these societies had originally no direct political aims, they served as a focusing point for the most brilliant and progressive minds of India, and it was inevitable that they should ultimately turn to the consideration of political problems and eventuate in political organizations such as the British Indian Association and the Bombay Association in 1851. However, these and similar associations were still mainly local and provincial in scope and purpose until the formation of the Indian National Congress in 1885. As one writer expressed it:

These were practically all the important public bodies in the country between the fifties and the early seventies of the last century which, though exercising no inconsiderable influence within their limited spheres of particular activities, were but the general exponents of particular interests and for a long time devoted mainly to occasional criticisms of important administrative or legislative measures affecting their respective provinces. Constructive policy they had none, and seldom if ever they laid down any programme of systematic action for the political advancement of the country. In fact the idea of a united nationality and of national interests; the cultivation of politics in its wider aspects as the fundamental basis of national progress and not merely as a means to temporary administrative make-shifts; the all-embracing patriotic fervour which like the Promethean spark has now made the dead bones in the valley instinct with life; and, above all, the broad vision of political emancipation which has now dawned upon the people and focused their energies and has directed their operations towards a definite goal and common aspiration, throwing all local and sectional considerations largely into the background – these were still very remote though not altogether foreign to the aims and objects of these Associations.¹

The government of India throughout this period was characterized by the concentration of authority at the center, the control over legislative functions exercised by the executive, and the ultimate responsibility of the British Parliament for the whole of Indian

¹ A. C. MAZUMDAR, *Indian National Evolution* (Madras, 1917), pp. 6–7.

government. Until the Indian Councils Act of 1861, legislation was entirely in the hands of British officials. With the enlargement of the Council by that Act, Indians were appointed to some of the new seats and for the first time they participated in the lawmaking process. However, the new positions were purely appointive and there was no intention of establishing responsible institutions. The nature of the Council was clearly set forth in the *Montagu-Chelmsford Report* in the following quotation from Lord MacDonnell:

The character of the legislative councils established by the Act of 1861 is simply this, that they are committees for the purpose of making laws—committees by means of which the executive Government obtains advice and assistance in their legislation, and the public derive the advantage of full publicity being ensured at every stage of the law-making process. . . . In later years there has been a growing deference to the opinions of important classes, even when they conflict with the conclusions of the Government, and such conclusions are often modified to meet the wishes of the non-official members. Still it would not be wrong to describe the laws made in the legislative councils as in reality the orders of Government; but the laws are made in a manner which ensures publicity and discussion, are enforced by the courts and not by the executive, cannot be changed but by the same deliberate and public process as that by which they were made, and can be enforced against the executive or in favor of individuals when occasion requires. The councils are not deliberative bodies with respect to any subject but that of the immediate legislation before them. They cannot inquire into grievances, call for information or examine the conduct of the executive. The acts of administration cannot be impugned, nor can they be properly defended in such assemblies, except with reference to the particular measure under discussion.¹

This limited, though signal, advance was not sufficient to stem the tide of dissatisfaction and unrest which was slowly spreading throughout the country. The various causes which served, from the Indian viewpoint, to swell the discontent are well summed up by one of the early nationalists in the following terms:

A whole nation was disarmed and the entire administration was vested in a bureaucracy which with all its recommendations became in its gradual development as imperious in its tone and unsympathetic in its attitude as it was saturated with the principles and prejudices of autocratic rule. That bureaucracy was no doubt at times and within certain limits,

¹ *East India. Report on Indian Constitutional Reforms, Sec. 64. Parliamentary Papers, Cmd. 9109 (1918).* (Hereafter referred to as the *Montagu-Chelmsford Report*).

generously disposed to grant patronage and extended favours of a minor description to any native of the country who might successfully court them; but as regards any material advancement and participation in the administration, the entire population were jealously kept at arm's length and the slightest indication on their part of a desire to enter even the border land of its close preserves was resented as an intolerable and dangerous trespass . . . The vast mass of the people were suffering from abject poverty and practically living on "one meal a day"; while at recurring intervals of few years they were decimated not by hundreds or thousands, but by hundreds of thousands, through famine and pestilence. The indigenous industries of the country were ruined and the bulk of the population driven to the soil to eke out a precarious subsistence as best as they could and left wholly without any substantial means to keep the wolf out of the door. The people had neither any share nor any voice in the administration which was conveniently allowed to drift according to the current of events and circumstances. The feeble and ineffectual complaints from time to time made either by the public Associations, or by the Press, and the failure of the spasmodic, though perfectly honest, efforts made by Government towards a superficial treatment of these organic diseases caused a deep and widespread commotion among a patient docile people until a strong tide set in to swell the wave of popular restlessness and discontent . . . The costly and gigantic farce of the Delhi Assemblage was enacted in 1877 while a terrible famine was committing havoc among millions of helpless population in Southern India whose dire efforts were severely felt even in Bengal and the Punjab, and which led an intrepid veteran journalist in Calcutta openly to declare that "Nero was fiddling while Rome was burning." The wanton invasion of Cabul, the massacre of Sir Louis Cavagnari and his staff followed by the Second Afghan War; the large increase of the army under the hallucination of the Russian bugbear; the costly establishment of a "scientific frontier" which afterwards did not stand the test of even a tribal disturbance, the complete disarming of an inoffensive and helpless population, although the Eurasians were left untouched; the gagging of the Vernacular Press as a means to stifle public voice against all these fads, which led another indomitable journalist in Bengal to convert in one night a Vernacular paper into an English journal; the sacrifice of the import cotton duties as a Conservative sop to Lancashire, and the unmerited and undignified rebuff administered by the Viceroy personally to a leading association in the country which had the temerity to raise its voice against this iniquitous measure and which was deeply resented by the entire Indian Press not altogether unsupported even by a section of the more fair-minded Anglo-Indian journalists, followed in quick, bewildering succession; and at last a reckless bureau-

cratic Government, as bankrupt in its reputation as in its exchequer, sat trembling upon the crumbling fragments of a "mendacious budget" on one side and the seething and surging discontent of a multitudinous population on the other. The theory of the "disappointed place-seekers" and the "microscopic minority" of the educated community was invented to minimise the importance of the growing unrest.¹

The Indian Association was formed in 1876 and rapidly became the focal center for the educated Indians in their effort to organize an active political propaganda throughout the country. Several government measures almost immediately furnished the association with the ammunition for their campaign. The reduction of the age limit for entrance to the Indian Civil Service was considered discriminatory against Indian aspirants and the Vernacular Press Act and Limitation of Arms Act of 1878 aroused general resentment. The leaders of the association toured the country securing signatures to a vigorous memorial to the Government protesting against the changes in the Civil Service laws. The results were such as to encourage Indian nationalists in the belief that there was sufficient unity among Indians throughout the country to make common political action possible.

The advent of Lord Ripon in 1880 eased the tension as he promptly gave proof of the sincerity of his conciliatory pronouncements by the repeal of the unpopular Press Act, a speedy termination of the Afghan War, and the abandonment of the Scientific Frontier project. In 1882 he pressed for local self-government in the villages but was largely defeated by the insistence of the Secretary of State on the placing of authority in the district magistrates rather than local boards. Lord Ripon had declared, referring to his own proposal:

It is not primarily with a view to improvement in administration that the measure is put forward and supported. It is chiefly desirable as a measure of political and popular education. His excellency in Council has himself no doubt that in course of time as local knowledge and local interest are brought to bear more freely on local administration improved efficiency will in fact follow.²

The Local Government Act of 1885, however, hardly fulfilled his high hopes.

In the closing years of Lord Ripon's tenure the struggle of the various nationalist leaders to secure a national political organization began to bear fruit. In 1883 a conference was held

¹ MAZUMDAR, *op. cit.*, pp. 26-29.

² H. H. LINDSAY, *The Indian Empire* (New York, 1932), p. 521.

in Bengal with representatives from most of the principal towns. The following year delegates to the Theosophical Society organized committees to raise funds and lay plans for a national union out of which the National Congress grew in 1885 and soon absorbed the corresponding movements. Meeting annually with scarcely a break down to the present time, the Indian National Congress has proved a most potent factor in the evolution toward self-government. The first Congress passed resolutions for the introduction of the elective principle in the selection of the existing councils, the right to discuss budgetary questions, to raise interpellations concerning any branch of the government, and the creation of a standing committee in the House of Commons as an appeal body from the executive veto over the legislative councils. It likewise pressed for a reform of the Indian Civil Service Laws, particularly as to recruitment.

Lord Dufferin, who had succeeded Lord Ripon in 1894, continued the liberal policy of the latter and finally recommended new legislation which he described as:

a plan for the enlargement of our provincial councils, for the enhancement of their status, the multiplication of their functions, the partial introduction into them of the elective principle, and the liberalisation of their general character as political institutions.¹

His recommendations failed to convince the Conservative government as to the wisdom of the elective principle, Lord Cross maintaining that "it would be unwise to introduce a fundamental change of this description without much more positive evidence in its favour than was forthcoming".² On the fresh recommendation of Lord Lansdowne, the new Viceroy, legislation was introduced in 1890, finally culminating in the passage of the Indian Councils Act of 1892, which did not prohibit, though it did not encourage the elective principle, disguising it as "nomination on recommendation". In the words of the Simon Commission, "a species of indirect election was thus inaugurated". The bill also extended the functions of the councils in the examination and discussion, though without vote thereon, of the annual budget and in the right of addressing questions to the executive. The official majority was retained and any intention of initiating a parliamentary form of government was expressly repudiated.

In the meantime, the nationalist movement had grown apace.

¹ *Ibid.*, p. 542.

² *Montagu-Chelmsford Report*, Sec. 69.

The Congress had held its annual meetings and regularly reaffirmed its demand for various reforms. As was inevitable, the extremist and moderate elements tended to diverge on questions of objective and method, and the former faction became increasingly outspoken in its opposition under the leadership of Bal Gangadhar Tilak and finally precipitated the famous Congress split at Surat in 1907. Various measures of an unpopular nature aided the extremists in their appeal for revolutionary procedure. The Age of Consent Act of 1889 had roused the resentment of Orthodox Hindu elements, while various methods employed in the sanitary regulations and segregation applied during the famine and plague years of 1896-97, roused general hostility. But most obnoxious of all was the partition of Bengal which occurred as part of Lord Curzon's vigorous efforts to reorganize the administrative system in the interests of greater efficiency, and immediately aroused vigorous and organized protest. A boycott against British goods had already been declared in protest against the partition proposal and with this was linked the demand for *swadeshi* or Indian made goods, a move which rapidly spread to other provinces which had not all joined the boycott. The boycott was endorsed by the National Congress in 1905, and again in the following year and repeal of the partition was demanded. When the Government took action against the students who were active in picketing, the Nationalists, already incensed at Lord Curzon's educational policy with its "officialization" of the University of Calcutta, promptly established a National University and National Schools. A vigorous anti-British press campaign was carried on in support of the boycott and *swadeshi* movements finally leading to the passage of the Indian Newspapers (Incitement to Offences) Act after an outbreak of political assassinations. Various nationalist leaders were arrested and deported, among them Tilak, whose subsequent conviction was the cause of rioting in Bombay.

During this period the National Congress had suffered a definite split between the Moderates and Extremists culminating in the disorders and adjournment of the Congress at Surat in 1906. Lord Minto, the new Viceroy, and the Secretary of State for India, Lord Morley, had been preparing their reforms which were finally announced on December 17, 1908. As described in the *Montagu-Chelmsford Report*:

The underlying idea of the Morley-Minto changes, which were introduced in 1909, was to associate the people to a greater extent with Government in the decision of public questions . . . The Morley-Minto reforms were essentially of

an evolutionary character; they were a natural extension of the previously existing system. Excessive claims were made for them in the enthusiasm of the moment but in any case they cannot justly be described as embodying any new policy. The change was one of degree and not of kind. Lord Morley himself emphatically repudiated the idea that the measures were in any sense a step towards parliamentary government. They were based on the fundamental principle that the executive government should retain the final decision of all questions, although some degree of popular control over legislation was established in the provinces by providing small non-official majorities At first they met with a good reception. The Congress welcomed them and Mr. Gokhale spoke of their "generous and fair nature", but very soon depreciatory criticism began to manifest itself and dissatisfaction has steadily increased.¹

Indian representation was provided on the executive councils, the legislative councils were enlarged and given a substantial elective element, and the provincial legislative councils obtained a non-official majority. The councils were granted the right of discussion of questions of public interest and a very limited share in the framing of portions of the budget. At about the same time, the Royal Commission on Decentralization recommended a relaxation of central control and a simplification of administrative machinery which was essential if the broader powers conferred on provincial governments were to be effectively operated. Commenting on these changes in 1918, the *Montagu-Chelmsford Report* said:

It would be unjust in us to blame the Commission for not taking a broader view of their task All we need say is, that, if we mean to give the provinces a real measure of constitutional liberty of action now, measures of decentralization far beyond those conceived by the authors of the report will certainly be necessary.²

One of the most momentous decisions of the reforms of 1909 in its effect upon later Indian developments, was the adoption of the principle of communal representation, with the reluctant assent of Lord Morley. In the words of the Simon Commission:

Here began that recognition of communal representation based upon the vote of a separate electoral roll, which has survived to this day and become a cardinal problem and ground of controversy at every revision of the Indian electoral system.³

¹ *Ibid.*, Secs. 8-9.

² *Ibid.*, Sec. 10.

³ *Report of the Indian Statutory Commission, May 1930, Sec. 125. Parliamentary Papers*, Cmd. 3568, 3569 (1930). (Hereafter referred to as the *Simon Commission Report*).

For a few years following the reforms, political agitation distinctly lessened. The concessions embodied in the reforms had strengthened the position of the Moderates, while the active campaign of the government against the press and seditious meetings had driven the Extremists to cover. In 1911, on the occasion of the coronation durbar at Delhi further concessions were announced including the revocation of the partition of Bengal and the transfer of the capital from Calcutta to the ancient capital of Delhi. But the very thing which pleased the Hindus most, the reunion of the Bengal provinces, only served to antagonize the Moslems whose fears were already being stirred by the Italo-Turkish War, the encroachments of Russia and England in Persia, and the Balkan War. Communal feelings were strained to the breaking point, finally resulting in rioting at Cawnpore. Hindu extremists were likewise active once more and the end of the year 1912 saw the bomb attack on the Viceroy, Lord Hardinge, and numerous dacoities committed to obtain funds for revolutionary purposes. The racial restrictions in South Africa had aroused an acute controversy about this time and served as a further unifying factor in India, while Gandhi's passive resistance campaign gained him a prestige and following in India which was to bring him into unquestioned leadership upon his return to India in 1914. The public utterance of Lord Hardinge, and the stand of the Government of India on this question, however, did much to offset the anti-British feeling connected with the South African question.

All this time Indian politicians were exerting continuous pressure to increase the pace of progress. The voice of criticism was never silent, but its tone showed a gradual change with the passing years; the purely negative attitude of opposition gradually passed into a more constructive policy. Criticism came to be combined with advocacy of progress, and with demands that became steadily more insistent for a form of government which would leave Indians free to rule India in a manner consistent with Indian ideas. The spirit of liberty was abroad and active. We can distinguish clearly the directions in which political activities were mainly bent. First, there was constant opposition to Government measures which were regarded as repressive . . . In the next place we may discern an ever-growing discontent with measures which were resented as evidence of racial discrimination . . . Thirdly, we find much energy directed to accelerating progress in what may be called the more humanitarian aspects of government and also in social or sectarian reform . . . We note at the same time a decided movement in favour of what we may call the liberalisation of existing institutions. Finally,

we remark a growing desire to improve the status of India in the Empire.¹

Thus the *Montagu-Chelmsford Report* sums up the forces of the immediate pre-war years. Revolutionary activity continued in Bengal though somewhat checked. The All-India Muslim League adopted a resolution in 1913 defining its objective as the attainment of self-government of a kind suitable to India. While the outbreak of the war brought forth generous support from all sections of India, various disaffected groups remained in constant opposition. Disorders persisted in Bengal and after the return of the rejected Sikhs from Canada on the famous *Komagatu Maru* spread into the Punjab. The *Ghadr* organization in America encouraged and financed a conspiracy for rebellion in India and certain student elements also engaged in such conspiracies. However, these incidents were the exception, and taken as a whole, India spent her blood and treasure in the service of the Empire without stint. Indian Nationalists placed their faith in the war aims proclaimed by the Allies with their condemnation of militarism and despotism, their glorification of democracy and of the rights of small nations. Rightly or wrongly, the leaders believed that England could not refuse a liberal and generous settlement of the Indian question after fighting a war allegedly to secure for the small nations of Europe what the Indians themselves desired. But along with their strenuous efforts on behalf of the British Raj, the nationalists kept up an insistent and increasingly comprehensive demand for political reform.

The increasing demand for a recognition of the important contribution India was making to the prosecution of the war, soon took definite form. In September, 1916, Mrs. Annie Besant founded the Home Rule League. A month later a memorandum of proposed reforms was drawn up by nineteen members of the Indian Legislative Council. In December the National Congress and All-Muslim League held joint sessions at Lucknow and agreed upon common action for political reform. This significant development marked a change of attitude on the part of the Moslems which had been slowly crystallizing ever since the revocation of the partition of Bengal, and had been accelerated by the series of Turkish embroglios beginning with the Turco-Italian War in 1911 and culminating with the Turkish entrance into the World War. These threats to the Khalifate seemed to the Indian Moslems to threaten their own security and their confidence in the government had been shattered by the events of 1911. The new nationalism which was

¹ *Montagu-Chelmsford Report*, Secs. 14-19.

developing rapidly as a result of the increased self-esteem and political self-consciousness coming from India's participation in the European War was sufficiently strong to offset the divisive tendency of the Pan-Islamic movement. The joint Congress-League meeting adopted a set of proposals for political reform known as the Congress-League scheme and agreed to cooperate with the Home Rule League in political propaganda. One of the most insistent demands throughout this period was for a definite and conclusive statement of British policy as to India's future, the need for which was felt by the Government of India as well.

On all sides it was felt that the situation demanded new handling. The latter part of Lord Hardinge's term of office was largely devoted to a preliminary and informal examination of the changes which were possible and prudent; and Lord Chelmsford's first act was to take up the inquiry from the point where his predecessor left it, and to concentrate attention in the first place on a declaration of policy. The Cabinet's preoccupation with the war inevitably delayed the decision of questions so delicate and complex. Meanwhile the difficulties of administration in India were rapidly increasing. Lord Chelmsford's Government felt that without the declaration of policy for which they were pressing, it was impossible for them to act effectively on a directed course. The announcement of August 20 cleared the situation, and was hailed with almost as much relief by the authorities as satisfaction by the politicians.¹

This declaration, issued by the Secretary of State for India in the House of Commons on August 20, 1917, read as follows:

The policy of His Majesty's Government, with which the Government of India are in complete accord, is that of the increasing association of Indians in every branch of the administration and the gradual development of self-governing institutions with a view to the progressive realisation of responsible government in India as an integral part of the British Empire. They have decided that substantial steps in this direction should be taken as soon as possible, and that it is of the highest importance as a preliminary to considering what these steps should be that there should be a free and informal exchange of opinion between those in authority at home and in India. His Majesty's Government have accordingly decided, with His Majesty's approval, that I should accept the Viceroy's invitation to proceed to India to discuss these matters with the Viceroy and the Government of India, to consider with the Viceroy the views of local Governments, and to receive with him the suggestions of representative bodies and others.

I would add that progress in this policy can only be

¹ *Ibid.*, Sec. 28.

achieved by successive stages. The British Government and the Government of India, on whom the responsibility lies for the welfare and advancement of the Indian peoples, must be judges of the time and measure of each advance, and they must be guided by the co-operation received from those upon whom new opportunities of service will thus be conferred and by the extent to which it is found that confidence can be reposed in their sense of responsibility. Ample opportunity will be afforded for public discussion of the proposals which will be submitted in due course to Parliament.¹

Lord Montagu promptly came to India and with the cooperation of the Viceroy, Lord Chelmsford, made a rapid but thorough survey of the existing situation the results of which were presented to Parliament in the *Montagu-Chelmsford Report*. But while Parliament was preparing to act upon the basis of these recommendations, other developments in India had started a new wave of anti-British agitation there which more than offset the favorable reaction to the proposed reforms. The Rowlatt Bills were introduced by the Government of India in anticipation of the expiration of the special powers conferred by the Defense of India Act. These bills conferred special powers upon the government in dealing with revolutionary activity but would be in force only after the Governor-General in Council had declared a state of emergency justifying such action to exist. The opposition to these measures was intense, calling forth the most extensive and concerted action with which the Government of India had yet been faced. Gandhi took the lead in condemning the proposed legislation and organized the first of his passive resistance campaigns in protest against them. The exaggerated propaganda soon carried the movement out of his control and resulted in various outbreaks of violence culminating with the tragic events of Amritsar in 1919. The tardy action of the Government in censuring and removing General Dyer came too late to stem the bitter feelings generated at Amritsar or to restore any confidence in the standards of British rule of which Amritsar was certainly the exception rather than the rule. Gandhi, who had been fasting in penance for the excesses of his followers, again pushed forward his policy of non-violent non-cooperation. At the same time he brought the support of his movement to the Moslem Caliphate Movement which was attempting to force the British Government to restore the Sultan of Turkey to his pre-war position. In 1920 Gandhi succeeded in winning the support of the Indian National Congress which voted a policy of non-cooperation with a boycott

¹ *Ibid.*, Sec. 6.

of the courts, of the legislative councils, of foreign imports, and of government conducted education. The powerful organization of the Congress was placed at Gandhi's service.

In the meantime Parliament was taking action on the *Montagu-Chelmsford Report* and the Government of India Act was passed on December 23, 1919. This Act provided for a considerable devolution of authority from the Central to the Provincial governments, the introduction of an element of responsibility through the power of appointing members of the assembly as ministers, an extension of the suffrage, the division of power as to Central and Provincial functions, and the principle of "dyarchy", or the distinction between "transferred" subjects which would be under the control of the Governor acting with his ministers, and "reserved" subjects under the control of the Governor in Council. Although criticism of the Act was general on the ground that the reforms did not go far enough, the different factions among the Indian Nationalists divided in their final reaction to it. The Moderates decided to co-operate in attempting to make the new system a success in the hope of further concessions on the review of the system which was promised in the Act itself. Gandhi and the National Congress determined on non-cooperation and joined with the Caliphate Movement to that end. Thus the elections for the new legislatures were boycotted by the latter groups, and the Moderates were in the majority. On February 8, 1921, the new Parliament was opened by the Duke of Connaught.

Throughout the year the non-cooperation movement was in full force accompanied by widespread anti-British demonstrations in which the collection and burning of foreign cloth was a common form. The Moslem population, stirred by its more fanatical elements and by the intense Nationalist propaganda and by the terms of the Treaty of Sevres which were considered inimical to Moslem interests, was profoundly disturbed. This unrest finally culminated in the Malabar uprising which after disposing of the government officials in the district vented its fury on the Hindu population. When the Ali brothers were imprisoned, Gandhi, still hopeful of holding his followers to non-violence, led the Congress in a new crusade of civic disobedience involving the non-payment of taxes as well as the usual forms of non-cooperation. The arrival of the Prince of Wales was the signal for a general strike in Bombay which ended in rioting and loss of life. Similar disturbances marked his progress through the country. Gandhi demanded the release of the prisoners taken in connection with these events, but when twenty-one

police officers were murdered by a mob in the United Provinces, Gandhi assumed full responsibility and called off the movement. The National Congress in its annual meeting voted in favor of non-violence and entrusted sole executive authority to Gandhi on behalf of the Congress. In the meantime the new Assembly had co-operated loyally with the government in its efforts to reduce a large deficit of eighteen and one half million pounds, supported the measures taken in reducing the Malabar uprising, and rejected a motion for the release of the Ali brothers. But when a restrictive press bill was introduced in an attempt to curb the revolutionary propaganda, the Assembly refused to pass it, forcing the Governor-General to use his power of certification. Likewise, a small increase in the salt tax was rejected by the Assembly, to be certified by the Governor-General thus provoking Gandhi's famous salt campaign. Gandhi's renewal of the civil disobedience campaign finally led to his arrest and imprisonment. The approaching elections brought a split in the Nationalist ranks with the formation of a new Home Rule Party (Swaraj) led by C. R. Das and Pandit Motilal Nehru. Although opposed by the Gandhi element, the National Congress permitted its members to run for the legislature for purposes of obstruction and the new party secured forty-five seats in the second Assembly. One of the first acts of the new Assembly was a resolution calling for a Round Table conference on the question of immediate independence.

The breach between Gandhi and Das was widening and with the latter's violent propaganda and the increased tension in Hindu-Moslem relations outbreaks of violence became more frequent. After serious rioting at Delhi in 1924, Gandhi self-imposed a three weeks fast and later in the year renounced the non-cooperation campaign. Outbreaks continued throughout the year. The leadership of the Congress seemed to have passed to C. R. Das who in the following year forsook his earlier policy and abandoned violence. Unfortunately for India, he died on June 16, 1925, and was succeeded by the Pandit Motilal Nehru who declared his adherence to the late leader's program. Non-cooperation was definitely abandoned, members of the Swarajist party taking seats on government boards. With the first election of the National Assembly president, Vithalbai Patel was selected from the Swarajist ranks. The year 1926 brought comparative quiet with Gandhi taking a vacation from politics and only minor communal disturbances. Lord Irwin succeeded Lord Reading as Viceroy and toward the end of the year new elections were held for the Assembly which recorded a drop in the

representation of the Swarajist group. In December the National Congress voted to return to the boycott and non-cooperation. The following year came the appointment of the Simon Commission to reconsider the constitutional position of India. The National Congress assailed the Commission for its lack of Indian members and decided to boycott its activities in India. This was the signal for widespread disturbances and a virulent press campaign, a situation which was aggravated by the industrial situation and numerous strikes, partly economic and partly political in their origins. In 1928 the Assembly split on the issue of the Commission, the upper house voting to have its representatives appear before the Commission, the lower house upholding the boycott of the National Congress. The Commission carried on its preliminary survey in spite of the boycott but on its return in October to complete the work, an Indian committee was appointed to facilitate the expression of Indian opinion.

Toward the end of the year Gandhi proposed a resolution threatening rigorous non-cooperation and non-payment of taxes unless Dominion status were granted by the end of 1929. The Moslem League supported Gandhi's resolution but in its meeting the following year demanded a federal system of government with autonomous and residual powers in the provinces and with the powers of the central government closely restricted. At about the same time the Chamber of Princes asserted that the British connection must be retained. In a vain attempt to stem the tide of public opinion, the Government twice re-affirmed its pledge of August, 1917. Gandhi started his campaign against British cloth which inevitably led to violence. A bomb was exploded in the National Assembly among the government benches and several members were injured. The advent of a Labor Government in England and its announcement of plans for an Indian Round Table Conference failed to improve the situation. In December an attempt was made to assassinate the Viceroy, Lord Irwin. At its annual meeting the National Congress decided to boycott the Round Table Conference and declared its goal to be immediate independence.

In February, 1930, the civil disobedience campaign commenced and in March Gandhi started his march to the sea to violate the salt laws. Violence became widespread. With Gandhi's arrest in May there was a short fierce outburst, but the arrest of most of the leaders and the disapproval of such bodies as the All-India Moslem Federation and the National-Liberal Federation was making itself felt. In June the Simon Commission made its report which

was almost universally condemned in India. The National Congress and the All-India Moslem Conference definitely rejected it. The Congress then demanded guarantees of Dominion status in advance as the price of their participation in the Conference. This was refused and the Conference opened without Congress representation, seventy-six Indian delegates having been appointed by the Governor-General.

The Conference was unanimous in its demand for responsible government and agreed on political equality for the Untouchables. It finally produced a draft constitution for an Indian Federation with responsible executives in both central and provincial branches. The problem of minority representation was not solved but left for further consideration, the Moslems having demanded separate electorates and a definite share in the holding of public office. The results, although incomplete, so far exceeded expectations that the Congress party was won over. Gandhi and the other nationalist leaders had been released from prison and on March 4, Gandhi arranged a truce with Lord Irwin whereby civil disobedience was renounced in return for the withdrawal of various restrictive police measures. The convening of the second Round Table Conference in September, 1931, saw the Congress represented in the person of Mahatma Gandhi but even his influence was not sufficient to bring the Hindus and Moslems together on the question of representation in the new constitution. Again this question was left over, but the draft constitution was further improved in other details. The disagreement over minority representation had again sharpened the communal feeling and a new wave of violence was sweeping over India by the time Gandhi returned from the Conference. The Untouchables, who felt that Gandhi had betrayed them at London, attacked the welcoming crowds at Gandhi's landing. Both sides claimed the Gandhi-Irwin truce had been broken. Civil disobedience was again proclaimed by the Congress and fresh restrictive measures by the Government. But with the spread of violence the Government took prompt and energetic action. Gandhi was again imprisoned, the restrictive measures extended to all India, and the National Congress declared illegal and its leaders arrested. Violence quickly died down although communal outbreaks continued in abated form throughout the year.

At the close of the second conference, MacDonald had announced that if the Indians did not arrive at a solution of the minority problem by the following summer the Government would proceed to draw up its own scheme of representation. Accordingly, no

agreement having been reached, the Government announced its plan of minority representation in the summer of 1932. It included provision for separate electorates for the Moslems and the Untouchables. Gandhi immediately protested that a separate electorate for the Untouchables would be a formal confirmation of the "bar sinister" which would condemn them to perpetual isolation. On September 12, he commenced a "fast unto death" to force the withdrawal of the separate electorate provision. As the Untouchables had themselves demanded the separate electorate to safeguard their interests, it was necessary for the Brahmin leaders to offer concessions which would meet their demand for protection. Finally, a compromise was reached whereby they were guaranteed 148 reserved seats under a joint electorate, more than twice the number of seats provided in the Government schedule. Two days later the Government accepted this arrangement and on the twenty-sixth Gandhi ended his fast.

With Gandhi in jail and with neither the Indian National Congress nor the British Labor Party in attendance, the Third Conference met to polish off the draft constitution. It finished its labors on December 24, and the new constitution was to be presented to the British Parliament in the fall of 1933 before being submitted to the test of Indian public opinion.

The Declaration of August 20, 1917, definitely committed the British Government to the development of responsible government in India "as soon as possible." What were the factors which should determine the rate of this advance have been fully set out in two remarkable reports which have preceded the two major efforts at constitutional revision since the 1917 Declaration was made. The *Montagu-Chelmsford Report* in 1919 and the *Indian Statutory (Simon) Commission Report* in 1930 each presented an elaborate analysis of all those factors in the Indian situation which were considered pertinent to the question of the readiness of India for further constitutional advance. They reveal, in the words of the Simon Commission, "the facts of the situation, those stubborn facts which no amount of rhetoric or appeal to abstract principles can alter."

At the outset of its recommendations, the Simon Commission laid down a principle which immediately emphasized one of the most important standards by which the British Government would measure Indian's readiness for self-government.

. Any constitutional changes now recommended for British India must have regard to a future development when

India as a whole, not merely British India, will take her place among the constituent States of the Commonwealth of Nations. . . . In the course of our enquiries we became more and more convinced of the impossibility of continuing to look at one half of India to the exclusion of the other.¹

A glance at the map of India will show how closely the States and British India are interwoven. . . . It is frequently an accident of history whether a particular district has been brought directly under British rule or left in the hands of an Indian ruler. . . . Whatever may be the differences of climate and physical feature, and whatever may be the diversities of race and religion in India, it is not these differences that are reflected in the purely arbitrary division between British and State territory. There is an essential unity in diversity in the Indian peninsula regarded as a whole.²

That this geographical unity be duplicated in the political field is held to be necessary for the economic development of the country and as "the first essential for peace and prosperity for both parts of India." There is no demand for an excessively high standard in this regard. It is not anticipated that India would be constituted as a unitary state with a high degree of centralization. Only that degree of unity is demanded which will enable All-India to act as a unit in dealing with the common affairs of the country taken as a whole.

The union of constituents such as the Indian States with the Provinces of India, the former autocratic and the latter democratic, necessarily involves giving the greatest possible internal freedom to the federal units. It is, we think, abundantly clear that it is only on such terms that there could be hope of achieving the unity of Greater India.³

Perhaps the most difficult problem to be faced in the struggle to achieve Indian unity lies not in the relations of British India and the ruling Princes but rather in the majority and minority groups in British India itself. It needs no stronger evidence than the failure of the Round Table conferences in the matter of minority representation to support the Government contention that the Indian people must achieve greater unity before material constitutional advance can take place. That the Communal dissensions and distrust were a principal consideration behind the proposed reserved powers was abundantly clear.

Until the spirit of tolerance is more widespread in India

Simon Commission Report, II, Sec. 13.

² *Ibid.*, Sec. 15.

³ *Ibid.*, Sec. 30.

and until there is evidence that minorities are prepared to trust to the sense of justice of the majority, we consider that the only practical means of protecting the weaker or less numerous elements in the population is by the retention of an impartial power, residing in the Governor-General or the Governors of Provinces, to be exercised for this purpose.¹

Democratic government, while based on the rule of the majority, depends for its general acceptance on due regard being shown to the interests of minorities, and we are slow to believe that, with the increasing opportunities opening to the legislatures of India, it will not be appreciated how greatly progress depends upon satisfying the reasonable claim to equal rights of these minorities whether British or Indian.²

Aside from the theoretical difficulties in maintaining a stable government in the face of such violent group antagonisms, the Government was not slow to point out the impossibility of even setting up a new government until agreement had been reached on the question of representation. It is frankly recognized that unity is increasing although not yet to such an extent that a government dominated by a Hindu majority can command the confidence and trust of the minority groups.

The unity imposed upon India by the external forces of Great Britain is today reinforced by an increasing sense of Indian nationality. The movement has been growing steadily for the last fifty years and with a greatly accelerated pace in the last decade. Beginning in an almost academic assembly of a few intellectuals, it has spread throughout the educated classes and is beginning to make itself felt among the masses. Whatever may be its shortcomings and however distasteful some of its manifestations, it appears to be the one force in Indian society today that may perhaps contain within itself the power to overcome the deep and dangerous cleavages that threaten its peace. Sectional interests—racial, religious, caste or provincial—still tend to absorb the energies and devotions of the majority of Indians, and there are too few signs yet of a willingness to surrender such claims to the common good.³

On one point only did the Commission find a united public opinion, namely the demand for equality with Europeans and its concrete expression in a demand for equal status in the British Empire as a Dominion or for independence.

While the experienced member of the Services will admit

¹ *Ibid.*, Sec. 36.

² *Ibid.*, Sec. 157.

³ *Ibid.*, Sec. 19.

the benefits of the British Raj, and realize the difficulties in the way of complete self-government; while the member of a minority community, putting the safety of his community first, will stipulate for safeguards; and while the moderate may look askance at extremist methods which he will not openly denounce, all alike are in sympathy with the demand for equal status with the European and proclaim their belief in self-determination for India.¹

In examining the political capacity of the Indian people the Simon Commission found favorable evidence in the working of the National Assembly and Legislative Councils, in the working of the Local Government Boards, in the growing political consciousness of the masses, in the slowly rising level of literacy, in the working of the Indian Services. It was pointed out that during the five years preceding the report no occasion had arisen for the exercise of the Governor-General's power of certification.

Any student of the course of events at the Centre during the past ten years will be struck by the fact that it has only been on very few occasions that the Governor-General has had to utilise his special powers of certification. Yet the output of legislation has been considerable and varied. It has dealt with matters affecting great issues. Yet these measures, introduced by a Government which is in a minority in the Legislative Assembly, have been passed into law.²

At the same time, the Commission found the general level of education and literacy woefully inadequate as a basis for intelligent participation in a democratic government, the masses largely swayed by communal and sectional feeling and unprepared to judge questions of national import, and considerable danger of a general undermining of respect for governmental authority through the widespread propaganda aimed at discrediting the government and the obstructionist tactics employed. The favorable opinion of the working of the National Assembly, already quoted, was qualified in view of the obstructionist tactics employed, tactics which not only interfered with the orderly functioning of government but also largely nullified the value of participation in the legislative function as a training and preparation for a larger measure of self-government.

Probably the two criteria most strongly emphasized in all the British discussion of India have been the need of unity and the capacity for defense and for the maintenance of law and order. Part of the emphasis on the latter has been due to the dangers of the

¹ *Ibid.*, I, Sec. 463.

² *Ibid.*, II, Sec. 179.

alleged lack of unity but also due to the strategic location of India. The argument is admirably summarized from the British view-point in the *Simon Report*:

The outstanding fact is that the urgency and extent of military defence in India are without parallel elsewhere in the Empire, and constitute a difficulty in developing self-government which never arose in any comparable degree in the case of the self-governing Dominions. . . . To these two features, which distinguish the case of India from that of any of the self-governing Dominions, viz., (1) the necessity of being adequately organized and in sufficient military strength to deal with a danger of the first order of magnitude on her frontiers, and (2) the need for large bodies of troops to support internal order, whose neutrality in communal conflict may be not only assured, but generally recognised, must be added a third. In contrast with the self-governing Dominions, and indeed in contrast with almost the whole of the rest of the world, India presents to the observer an astonishing admixture not only of competing religions and rival races, but of races of widely different military capacity. . . . As things are, the presence of British troops and the leadership of British officers secure that the fighting regiments of India, though representing only a portion of India's manhood, shall not be a menace to the millions who are conducting their civil occupations without any thought of the consequences which might ensue if British troops were withdrawn. . . .

That the standard of defense thus required is no absolute one is indicated, however, in the following conclusion:

Does it necessarily follow that India's attainment of self-government as a unit of the British Empire must be postponed till India recruits and officers from men of Indian races a complete Army for external defence by land any more than it has proved necessary to postpone self-government in the Dominions until each Dominion provided its exclusive defence at sea? The time may come when some intermediate solution will offer itself.¹

The importance of the Police power and its exercise to the question of self-government was strongly stressed in every report. The Simon Commission pointed out that in the subject of Police "every branch of provincial Government is involved; a reasonably efficient police administration is the condition under which all departments may operate". But where defense in relation to the Army was held to be of necessity a reserved subject, it was proposed

¹ *Ibid.*, Sec. 135.

to transfer Police and further to make it a provincial rather than a federal concern.

The importance of this problem of defense in the opinion of the British Government is well indicated by the fact that it was one of the subjects to be reserved to the Governor-General. In his final address to the First Round Table Conference, the Prime Minister laid down those subjects which it was held must be under the ultimate control of the British Government. Defense and External Affairs were wholly reserved, emergency powers were retained for the maintenance of order and the guarantee of minority rights, and safeguards required as to the financial integrity of the new government. No clearer evidence of the essential nature of these criteria of capacity is needed than that the Government should insist on holding reserved powers with regard to them during the period of transition until the stability of the new scheme is fully assured.

Certain striking contrasts appear between the presentation of the case for India and the case for Iraq. In the first place, the latter contemplated complete independence while for India the British proposals looked no further than Dominion status. Consequently, where an absolute break was involved in Iraq's case, in India only a gradual change was considered with the authority of the Crown still legally supreme. The British report on Iraq was concerned with proving the fulfillment of the various criteria elaborated. The reports on India seem to be largely concerned with explaining the failure to record such achievement and the goal that must be reached. Hence the lengthy analysis of the lack of unity both as to communal dissensions and the relations of British India and the States, the long references to the necessity for British control of defense and of finance. Where Britain spoke with confidence and assurance in the case of Iraq, she sounds apologetic when dealing with India. But in spite of the differences, the points of reference in the two cases are strikingly similar, practically the same criteria being advanced as the standards against which the two cases are to be measured. Thus stable government, united public opinion, capacity for external defense and internal security, the protection of minorities, a sound judicial system, and the ability to fulfill international obligations — all these are again considered in weighing the evidence as to the readiness of India for the constitutional advance which she was demanding just as they had been measured in determining the readiness of Iraq for an independent existence. In the case of India, however, certain factors received the major share of attention, namely the factor of unity and that of defense.

In examining the Indian attitude toward the criteria of capacity pertinent to the Indian situation, one is faced with a mass of evidence including the records of the various party conventions and All-India conferences of one sort and another, the mass of private publications, and, of particular interest, the records of the Indian Round Table Conferences. Throughout this literature one finds evidence of a firm conviction in the right of India to manage her own affairs and of her inherent ability to manage them for the best interest of India. The belief in self-determination is fundamental to the Indian position. In view of Gandhi's repudiation of Western standards as inapplicable to India and the movement back to the spinning wheel and an Indian economy, the question may be raised whether the criteria advanced in terms of an ability "to stand alone under the strenuous conditions of the modern world" have any universal validity? However, it is difficult to judge how far this attitude is a matter of tactics in the struggle for further concessions from Great Britain rather than a serious proposal for the future basis of Indian polity. Be that as it may, the Round Table Conferences would seem to indicate that the bulk of Indian opinion is not yet converted and that the attempt is being made to prove the ability of India for self-government in terms of the standards set up by the West.

All that I want to impress upon this Conference is that if Indians are given the chance they will prove themselves worthy of undertaking any position that is entrusted to them, and the same will apply to the Army.¹

We are perfectly conscious that we may commit mistakes and that for some time our administration may be comparatively inefficient, but we are determined to go through that stage, for we want to come into our own. We may not manage things as efficiently as you are doing now, but it is our affair and we want to be allowed to manage it ourselves.²

An interesting phase of this confidence in the inherent capacity of India is the tendency to assume that many of the present difficulties are due to the existing political situation and that self-government would speedily eradicate them, a point made repeatedly as to the problem of unity and of defense, and advanced by representatives of the ruling princes as well as of British India. Thus the Nawab of Bhopal:

¹ Indian Round Table Conference *Proceedings*, 1930, p. 161.

² *Ibid.*

I wish to make it clear, that among the Princes no rift exists as between Moslems and Hindus, and that in the Indian States communal tension has so rarely occurred that it can be said to be practically non-existent. This fact brings me to a second point, namely, that there is nothing in our respective religions which should lead to much ill-will, and that the reason why it has arisen in British India has been solely political. The various minority movements have exactly the same basis, and equally the attitude of many of the politically-minded in India towards Great Britain, which has demonstrated itself at times in ways which are frankly to be deplored, is not, believe me, inspired by racial animosity, but is solely political, and as soon as the foundations of the constitution for a self-governing India are well and truly laid these differences, we all believe, will automatically disappear.¹

Gandhi comes to the same conclusion in his final speech at the Conference :

I repeat what I have said elsewhere, that so long as the wedge in the shape of foreign rule divides community from community and class from class, there will be no real living solution, there will be no living friendship between these communities. It will be after all and at best a paper solution. But immediately you withdraw that wedge, the domestic ties, the domestic affections, the knowledge of common birth—do you suppose that all these will count for nothing?²

Undoubtedly, the criteria which was most commonly accepted was that of unity. Page after page of the conference records dealt with this problem either in stressing the necessity for unity as between the States and British India or in urging the necessity for full satisfaction of the claims of minority groups in order that unity might be secure. But in spite of all the protestations of fundamental unity, the inability to compromise the conflicting demands of the various minority groups proved the stumbling block of the Conference. It remains to be seen whether the proposals finally brought forward by the Government will have sufficiently satisfied these demands to enable the people of India to accept the new constitution and put to the test the claim that full participation in a responsible government would dispel the fears which have given rise to communal antagonism.

In the matter of defense, the Indian delegates frankly recognized the necessity for a gradual transition during the period of Indianization of the Army but equally frankly placed the responsibility for

¹ *Ibid.*, p. 108.

² *Ibid.*, 1931, p. 397.

the present incompetence upon the British Government. At the same time, they vigorously asserted the potential capacity of India to manage its own problems of defense and law and order. Speaking at the opening meeting of the Conference, Sir Tej Bahadur Sepru said :

I now come to the question of the Army. May I remind you of a very striking speech of the late Mr. Montagu in which he said, "Having kept Indians out of commissioned ranks for 70 or 80 years, having deprived them of the opportunity to build up their own Army and to receive training, does it in fairness lie in your mouth to say now that India must not get self-government because it cannot defend its own borders; it cannot maintain its own peace." We realize that we have got to train a sufficient number of our men, and we have to be patient about that; but all we say is "Give us the opportunity to train our own men; give us the freedom to establish institutions."¹

A famous Sikh general testifies :

The Indian Police in time of disorder and outbreaks have been discharging their responsibilities and duties honestly, and there is no reason why Indian soldiers, who are more disciplined, should not be able to discharge their duties honestly and conscientiously. The Army question, instead of offering any insurmountable difficulties, becomes easy of solution if the dead weight of expenditure on British troops is removed and the Indianization of the higher ranks in the army earnestly pushed through.²

And the late Muhammad Ali exclaims :

Well, what about the Army? It is the biggest indictment against Great Britain that the Army is not ours today, and if you ever use that excuse of the Army you will condemn yourselves out of your own mouths. Let me tell you frankly and honestly, but in a friendly way, that your greatest sin was the emasculation of India.³

With regard to the dangers alleged to be involved in the transfer of fiscal control to Indian hands, Sir Tej Sepru asserted :

It seems to me that there is not very much force in the argument that the credit of India will disappear in the London market if finance comes into Indian hands. I know of instances in which private individuals have raised money in London. I know that your country has advanced big loans to small

¹ *Ibid.*, 1930, p. 30.

² *Ibid.*, p. 90, quoting SARDAR UJJAL SINGH.

³ *Ibid.*, p. 101.

countries which are not within the Empire. Did you ever raise this question in the case of other countries? I therefore ask you, if you feel that there is any real genuine difficulty with regard to these matters, please do not use them as obstacles in our way but as difficulties to be overcome.¹

And in answer to the fears of expropriatory or discriminatory legislation against foreign interests, he continued:

..... I believe that there is not a single man here who would like to have any expropriatory legislation. We do not want to rob the Europeans of their capital. On the contrary, we are most anxious that our friends the Europeans, who have settled down in India or who carry on their business there, should feel that they have the same rights and privileges which genuine born Indians have. They are quite welcome to suggest any safeguards for their rights and interests, and we shall be more than willing to meet them.²

It is significant that the most difficult problems in the drawing-up of the proposed constitution were those involving a compromise as between different Indian interests rather than between India and the British Government. There was no outright repudiation of the criteria advanced by Great Britain; there was frank disagreement as to the degree of capacity shown in certain fields of endeavor. The necessity for unity was admitted but countered by the argument that it would follow the achievement of self-government. The need of adequate defense was granted and the claim advanced that the basis for such defense existed in India. The need for political capacity was accepted, and the existence of ample political capacity unhesitatingly affirmed. It was conceded that the financial structure should be sound and asserted that with the creation of a Reserve Bank there should be no real obstacles to Indian control of finance. The validity of the criteria of capacity to fulfill international engagements was admitted by the acceptance of External Affairs as a reserved subject. The necessity for a high standard in the administration of justice is fully accepted and agreement reached on the question of a Supreme Court for All-Indian problems. Taken all together there is little to distinguish the criteria accepted as pertinent by the Indians themselves from those of the British Government. They differ in the main as to the degree of attainment necessary before advance should be made. In the main they demand equality, in which demand would seem to be implicit the recognition of common standards.

¹ *Ibid.*, p. 30.

² *Ibid.*

CHAPTER V

CRITERIA IN RECOGNITION POLICY

In order to secure admission to the Family of Nations, thereby becoming an International Person and subject of International Law, a new *de facto* State must be recognized by the existing members of the international community.¹ Recognition is generally conceded to be a matter of policy and not of law,² but it is possible by an examination of the practice of States to formulate the conditions under which recognition has customarily been accorded to new States.

The act of recognition is both an expression of policy and an acknowledgment of the fact that the new State is actually a *bona fide* State, competent to enter into the rights and obligations of an International Person under International Law. Therefore, one might expect the conditions required in practice as prerequisite to the granting of recognition should bear some relation to the criteria of capacity for independence advanced in the case of dependent communities. Under the *de facto* theory of recognition, the conditions which are held to justify recognition are those which are inherent in the idea of statehood, the essential characteristics of a State, and, theoretically at least, should correspond to any set of criteria of capacity which may be found to have general validity. Where the practice of recognition has been dominated by political considerations, the conditions may be more or less than those required by the *de facto* theory, as expediency dictates. However, the qualifications could not be persistently relaxed without grave danger to the Community of Nations from the inability of new States to comply with the obligations incident to membership therein.

¹ A. S. HERSHEY, *International Law and Organization* (New York: Macmillan Co., 1927), p. 199; L. OPPENHEIM, *International Law* (London: Longmans, Green & Co., 1905), I, 109-10; E. H. STOWELL, *International Law* (New York: Henry Holt & Co., 1931), pp. 38-39.

² See HERSHEY, *op. cit.*, p. 199, for citations of opposing authorities on the moot question as to the existence of a *right* to recognition under International Law. The present writer agrees with those denying the existence of such a *right* under existing International Law, but would suggest that the near future may call for a reconsideration of this question in so far as the mandated territories are concerned. The point may be made that the terms of Article 22 of the Covenant give such a right to the mandated communities and impose an obligation to recognize upon the States members of the League of Nations.

Although the question of whether or not a new political unit constitutes a State in fact does not fall within the province of International Law, most International Law writers have discussed the general rules which should govern their admission into the Family of Nations.¹ Their findings constitute the basis of the *de facto* theory of recognition, namely that the new political entity must possess the essential characteristics of a State, to wit, a people, a territory, a stable government, and sovereignty.² The decision as to the fulfillment of these conditions is a matter for the individual judgment of the different States, although they may act in concert in granting recognition.³ On the other hand, a State is under no legal obligation to refuse recognition merely because all the essential elements of statehood do not, in fact, exist, unless by its act it would violate the rights of third parties such as those of the parent State or the rights of the signatories of the Kellogg Pact in the case of a State established in violation of the obligations created therein.⁴

Historical practice shows little consistency in the application of the *de facto* theory of recognition, even by its two most important exponents, Great Britain and the United States. The former, while acknowledging the correctness of this theory, has failed to apply it consistently, frequently having participated in joint recognitions by the Concert of Powers with the deliberate intention of bolstering up the cause of monarchy.⁵ However, in the case of the revolting Spanish Colonies in South America, Great Britain applied the *de facto* theory in spite of pressure from the Continent for joint action in support of the monarchic principle.⁶ She did the same in the case of Belgium, of Cuba, and the Latin American countries. But the World War with its crop of new states saw a reversal in policy, with recognition again being used primarily as a diplomatic weapon and without regard to the obvious lack of the essential characteristics of a State on the part of certain States to whom recognition was given.

Early American recognition policy was based upon the existence of a *de facto* government established in conformity with the will of the people. In 1792, Jefferson expressed the view that "it accords with

¹ HERSHEY, *op. cit.*, p. 199.

² *Ibid.*, p. 158.

³ *Ibid.*, p. 199. FREDERICK L. SCHUMAN, *International Politics* (New York: McGraw-Hill Book Co., 1933), pp. 127-29. Examples of joint recognition: Greece in 1830, Belgium in 1831, Montenegro, Serbia, and Roumania in 1878, Czechoslovakia and Poland in 1918, and the Baltic States in 1919.

⁴ SCHUMAN, *op. cit.*, p. 129.

⁵ MARY M. KHEIRSTEAD, *A Comparison of the British and American Recognition Policies* (Chicago, 1931), p. 231.

⁶ *Ibid.*, p. 44.

our principles to acknowledge any government to be rightful which is formed by the will of the nation substantially declared."¹ While this emphasis upon the popular basis of government was to receive a new impulse at a later date, the protracted discussion over the recognition of the new South American States turned primarily on the point as to what constituted evidence of the existence of a *de facto* government. The long list of diplomatic and executive pronouncements on this subject throughout the first half of the nineteenth century² was admirably condensed in the classic statement of President Grant in 1875, in which he said:

In contests of this nature where a considerable body of people who have attempted to free themselves of the control of the superior government have reached such point in occupation of territory, in power, and in general organization as to constitute in fact a body politic; having a government in substance as well as in name; possessed of the elements of stability and equipped with the machinery for the administration of internal policy and the execution of its law; prepared and able to administer justice at home, as well as in its dealings with other powers, it is within the province of those other powers to recognize its existence as a new and independent nation. In such cases other nations simply deal with an

¹ HERSHEY, *op. cit.*, p. 209, n. 34.

² Referring to the revolutionary struggles in Spanish America, Secretary of State Adams wrote in 1818: "There is a stage in such contests when the parties struggling for independence have, as I conceive, a right to demand its acknowledgement by neutral parties, and when the acknowledgement may be granted without departure from the obligations of neutrality. It is the stage when independence is established as a matter of fact so as to leave the chances of the opposite party to recover their dominion utterly desperate." (J. B. Moore, *Digest of International Law* [Washington: Government Printing Office, 1906], I, 78.)

Again, in 1822, in reply to the protests of the Spanish Minister, Adams wrote: "In every question relating to the independence of a nation two principles are involved, one of *right* and the other of *fact*; the former exclusively depending upon the determination of the nation itself; and the latter resulting from the successful execution of that determination. . . . Under these circumstances, the Government of the United States, far from consulting the dictates of a policy questionable in its morality, yielded to an obligation of duty of the highest order by recognizing as independent states nations which, after deliberately asserting their right to that character, have maintained and established it against all the resistance which had been or could be brought to oppose it." (*Ibid.*, p. 88.)

In 1826, Clay, as chairman of the Senate Committee on Foreign Relations, said: "With respect to new powers the recognition of their Governments comprehends, first, an acknowledgment of their ability to exist as independent states, and secondly, the capacity of their particular Governments to perform the duties and fulfil the obligations towards foreign powers incident to their new condition." (*Ibid.*, p. 96.)

In 1836 both Houses of Congress passed resolutions "that the independence of Texas ought to be acknowledged by the United States whenever satisfactory information should be received that it had in successful operation a civil government capable of performing the duties and fulfilling the obligations of an independent power." (*Messages and Papers of the Presidents*, III, 266.)

actually existing condition of things, and recognize as one of the powers of the earth that body politic which, possessing the necessary elements, has in fact become a new power. In a word, the creation of a new state is a fact.

To establish the condition of things essential to the recognition of this fact there must be a people occupying a known territory, united under some known and defined form of government, acknowledged by those subject thereto, in which the functions of government are administered by usual methods, competent to mete out justice to citizens and strangers, to afford remedies for public and for private wrongs, and able to assume the correlative international obligations and capable of performing the corresponding international duties resulting from its acquisition of the rights of sovereignty. A power should exist complete in its organization, ready to take and able to maintain its place among the nations of the earth.¹

No important modifications of American recognition policy as formulated by President Grant occurred until the Wilsonian doctrine of legitimacy was put forward with reference not to a new State but to a new government in Mexico.² Early in his first administration, Wilson enunciated the doctrine that "cooperation is possible only when supported at every turn by the orderly processes of government based upon law, not upon arbitrary or irregular force."³ Originally

¹ *Messages and Papers, op. cit.*, VII, 337. Compare this statement with the following declaration of President McKinley in his second inaugural address: "The principles which led to our intervention require that the fundamental law upon which the new government rests should be adapted to secure a government capable of performing the duties and discharging the functions of a separate nation, of observing its international obligations of protecting life and property, insuring order, safety, and liberty, and conforming to the established and historical policy of the United States in its relation to Cuba. The peace which we are pledged to leave to the Cuban people must carry with it the guarantees of permanence." (*Ibid.*, *Supplement*, p. 165.)

² Even the premature recognition of Panama was not considered by President Roosevelt as a reversal of traditional policy but was explained both in terms of the customary policy and as an exception which in no way invalidated the customary procedure. "Seeing in the recent events on the Isthmus an unopposed expression of the will of the people of Panama and the confirmation of their declared independence by the institution of a *de facto* government, republican in form and spirit, and alike able and resolved to discharge the obligations pertaining to sovereignty, we have entered into relations with the new Republic." (*Foreign Relations of the United States, 1903* [Washington: Government Printing Office], p. 272.) However, in his message to Congress the President frankly recognized the disparity between the situation portrayed in the preceding quotation and the actual facts in the case when he said: "Recognition by this government was based upon a state of facts in no way dependent for its justification upon our action in ordinary cases. I have not denied, nor do I wish to deny, either the validity or the propriety of the general rule that a new state should not be recognized as independent till it has shown its ability to maintain its independence.... But.... the rule is subject to exceptions, and there are in my opinion clear and imperative reasons why a departure from it was justified and even required in the present case." (*Ibid.*, pp. 272-73.)

³ HERSHEY, *op. cit.*, p. 210, n.

directed against new governments which were brought into power by a resort to violence and unconstitutional methods, it required only a different emphasis to direct it against the establishment of a new state by methods which did violence to the rights and obligations of the parties concerned. Thus Secretary Stimson's note of January 7, 1932, stated the position of the American Government with regard to the creation of the new State of Manchoukuo in the following terms:

It cannot admit the legality of any situation *de facto*, nor does it intend to recognize any treaty or agreement entered into between those governments, or agents thereof, which may impair the treaty rights of the United States, or its citizens in China, including those which relate to the sovereignty, the independence, or the territorial and administrative integrity of the republic of China, or to the international policy relative to China, commonly known as the open door policy; and that it does not intend to recognize any situation, treaty, or agreement which may be brought about by means contrary to the covenants and obligations of the Pact of Paris of August 27, 1928, to which treaty both China and Japan as well as the United States are parties.¹

In its recognition of the new post-war States of Europe, the United States has vacillated between principle and expediency as its special interests dictated. The prompt recognitions of Czechoslovakia and Yugoslavia were clearly dictated by policy, the former being recognized while the outcome of the war was still in doubt, the latter being recognized within a month of the formation of a national government. On the other hand, the *de facto* theory was strictly adhered to in the American action with regard to the new Baltic States, recognition not being granted until the stability of the new regimes had been demonstrated over a period of years. Great Britain, on the contrary, joined with its Continental allies in using the recognition of these new States as a diplomatic weapon in the struggle against Bolshevism and in strengthening their strategic position at the Peace Conference.²

In so far as the practice of recognition has been based upon political expediency without regard to the *de facto* conditions obtaining in the new States, it has contributed little to the search for criteria of capacity. The one requirement advanced with reasonable consistency has been the demand for guarantees as to the protection of the rights of minorities, particularly in the enjoyment of religious

¹ Q. WRIGHT, "The Manchurian Crisis," *A.P.S.R.*, XXI, No. 1, pp. 75—76.

² KHEIRSTEAD, *op. cit.*, pp. 138—60.

liberty and freedom of conscience. As early as the Peace of Augsburg and the Treaties of Westphalia some attempt had been made to protect the rights of minorities, and before Greece gained her independence in 1830 pledges were extracted concerning the treatment of minority groups.¹ The same procedure was followed in the Treaty of Berlin in 1878 with regard to Bulgaria, Montenegro, Serbia, and Roumania, and the long series of post-war Minorities Treaties with most of the States of Central and Eastern Europe has given further sanction to this principle.

Where the *de facto* theory of recognition has been applied and the act of recognition has not been controlled primarily by considerations of policy and diplomacy, but rather by whether or not the new political unit presents the essential characteristics of statehood, it has been necessary for the recognizing State to select the evidence which is to be considered as conclusive. Consequently, the practice of Great Britain and the United States, who are the principal proponents of this theory, furnishes pertinent evidence as to the criteria of capacity for independence from the point of view of disinterested States not vitally concerned in the immediate outcome.

Recognition practice under the *de facto* theory shows certain criteria have been consistently advanced. The essentials of a people and territory have been taken for granted. The requirements of a stable government and sovereignty have been especially emphasized together with the fulfillment of international obligations. In the early history of recognition, the principal criterion of stability was the failure of the former parent state to reassert its authority over the *de facto* government. Time was held to be of the essence of stability. But besides being able to resist successfully the force of the parent state, the government of the new State must evidence its stability with regard to its internal situation by the maintenance of its authority throughout its territory. Moreover, since the spread of the democratic principle, evidence of probable internal stability has been looked for in a clear expression of popular approval of the new political unit. While the ability to observe international obligations was assumed in the existence of stability, in recent practice this has been expressly stipulated. The general withholding of recognition of the recently created State of Manchoukuo is the most widespread application of the *de facto* theory in the whole history of recognition practice, being based upon the official report of the Lytton Commission to the effect that the *de facto* conditions

¹ SCHUMAN, *op. cit.*, pp. 312—16.

essential to the existence of a State have not yet been achieved.¹ It likewise emphasizes the criterion of the observance of international responsibilities by insisting that a new State must not be formed through a violation of international engagements, in particular the Pact of Paris².

¹ *Infra*, pp. 134-36.

² *Ibid.*

CHAPTER VI

CRITERIA FOR LEAGUE MEMBERSHIP

In view of the practically universal character of the League of Nations and of the requirement of a two-thirds vote of the Assembly in support of the admission of new members, the criteria applied by the League in determining the qualifications of new members are particularly pertinent to any analysis of the criteria of capacity for independence.

Admission of new States to the League of Nations is governed by the provisions of Article 2 of the League Covenant:

Art. 2. Any fully self-governing State, Dominion, or Colony not named in the Annex may become a Member of the League, if its admission is agreed to by two-thirds of the Assembly, provided that it shall give effective guarantees of its sincere intention to observe its international obligations, and shall accept such regulations as may be prescribed by the League in regard to its military, naval, and air forces and armaments.

The first meeting of the Assembly brought applications for admission to the League from several of the new post-war States of Europe and Asia as well as from other States of long standing. These applications were referred to the Sixth Committee on political questions which adopted a formal questionnaire embodying the principal criteria by which it intended to measure the qualifications of the applicants. This questionnaire, which has been used in connection with all the applications for admission to the League, reads as follows:

- 1) Is the application for admission to the League of Nations in order?
- 2) Is the Government recognized *de jure* or *de facto*, and by which States?
- 3) Does the country possess a stable government and settled frontiers? What is its size and population?
- 4) Is the country fully self-governing?
- 5) What has been the conduct of the country, including both acts and assurances with regard to:
 - a) Its international obligations?
 - b) The prescriptions of the League as to armament?¹

¹ League of Nations, *Official Journal, Records of the Assembly*, 1920, I, 578—79. (Future references will be abbreviated: *Assembly Record*.)

Aside from the first question which is a mere matter of form, the criteria advanced in this questionnaire are in obvious conformity to the International Law of Recognition and emphasize the factors commonly advanced as the essential characteristics of a State, namely a people, a territory, and sovereignty.¹ The criteria of recognition by other States would seem to be of secondary importance. While the fact of more or less general recognition would constitute circumstantial evidence in support of the claim of a stable government able to discharge its international responsibilities, the lack of such recognition could not be held conclusive against the applicant. In fact, it is quite conceivable that in the future the normal procedure on the part of a new State seeking recognition would be to apply immediately for admission to the League. On the other hand, the fact of wide recognition has not been accepted by the League as conclusive evidence of the fulfillment of the other criteria. It is to be noted that all of the States refused admission to the League by the first Assembly in 1920, had received favorable reports as to their recognized status.²

The third criteria as to the existence of a stable government and settled frontiers has been the one over which the League has been most concerned. The delimitation of the frontiers is usually a matter of record and the Committee in reporting thereon has commonly cited the treaties or other documents in which they have been recorded. In the case of the unsettled boundary between Iraq and Syria, the League's Sixth Committee in reporting thereon noted that Iraq had agreed to accept as final the decision to be made by the Council of the League.³ The questionnaire also cited size and population in connection with the determination of stability. In spite of the admission of Luxemburg, it seems unlikely that any very small States will be admitted to the League. The cases of Liechtenstein and Monaco and the tenor of the debate in the Assembly in 1921 in considering the possibility of modified forms of membership for small States, would seem to support this view. However, the Assembly has carefully avoided basing its decisions on the matter of size alone. In introducing the report of the Committee to the Assembly, M. Benes, the Rapporteur, said:

The Committee agreed that a State with too small a

¹ "A State proper is in existence when a people is settled in a country under its own Sovereign Government." (L. Oppenheim, *International Law* [London: Longmans, Green & Co., 1905], I. 100.)

² For example, Esthonia, Latvia, Lithuania, Armenia, etc. See Report of Fifth Committee, *Assembly Record*, 1920.

³ League of Nations, *Official Journal*, *Special Supplement*, No. 109, 1932, p. 62.

territory and too few inhabitants could not be refused by the League of Nations because of its size. . . . We have decided on the admission of Luxemburg and non-admission of Liechtenstein. The reason given for the non-admission of the latter is not, however, its small size, but its close connection with another State which is able to defend the interests of Liechtenstein and thus ensure that this little State is not left outside the League of Nations.¹

At the same session, M. Hunneus (Chili) said: "The Committee worked on the principle that all free states, who give adequate guarantees of their sincere intention to fulfill their international engagements, should be admitted to the League."² The Fifth Committee in its report stated:

. . . . this State does not appear to be in a position to carry out all the international obligations imposed by the Covenant by reason of her limited area, small population, and her geographical position, she has chosen to depute to others some of the attributes of sovereignty. For instance, she has contracted with other Powers for the control of her Customs, the administration of her Posts, Telegraph and Telephone Services, for the diplomatic representation of her subjects in foreign countries, other than Switzerland and Austria, and for final decisions in certain judicial cases. Liechtenstein has no army.³

As further evidence of stable government the League Committee has looked to the stability of a given government and the extent to which its actual control corresponds to the area under its technical jurisdiction. Thus in reporting on the application of Georgia, the Committee stated: "The actual government of Georgia has now been in power for three years and may therefore be considered stable."⁴ In Lithuania in 1921 the Committee found:

The authority of the present Government is clearly restricted to the territory occupied by its troops. It has lost its authority in certain districts where it formerly held sway and which are at present occupied by forces of another Power.⁵

Again, as to Armenia:

It is a country which is now in a very difficult situation. A great part of the country is taken by her enemies, and the

¹ *Assembly Record*, 1920, I, 563.

² *Ibid.*, p. 561.

³ *Ibid.*, p. 667.

⁴ *Ibid.*, p. 610.

⁵ *Ibid.*, p. 638.

Government cannot be called quite a stable one. The frontiers have not yet been determined.¹

As to Azerbaidjan, "that Azerbaidjan does not appear to have a stable Government whose authority extends over the whole territory."²

An interesting angle of the problem of stability was brought out in the debates and action on the applications of Georgia, Latvia, and Esthonia, in 1921. The Committee recommended that they should be informed "that their requests for admission had been received with sympathy, but that circumstances are such as to preclude the Assembly from arriving at a definite decision."³ However, each of these nations had received a favorable report from the Committee with regard to all the points in the questionnaire. What were these "circumstances"? They were the uncertainties of the Russian situation and the possibility of an attempt by Russia to regain her lost provinces, which, if they were admitted, would immediately drag all the League members into the struggle. M. Benes described the situation in the following terms:

Affairs in certain parts of Europe are still in confusion, and we do not know whether, to-morrow, new problems and new difficulties will not arise which may draw some of these States into turmoil. Under these circumstances, we thought that in the interests of the League, and in order not to discourage any of these States, but to show ourselves as favorable as possible towards them, it was desirable not to admit them into the League, which would then have to take full responsibility, but to allow them to collaborate with the Members of the League in some of the Technical Organizations.⁴

In other words, while satisfied as to the existence of a stable government at the moment, the League was not convinced as to its permanence. It would have been more logical and less open to the criticism which it provoked, to have denied the existence of a stable regime in these countries, inasmuch as some degree of permanence is surely of the essence of stability.

The fourth point in the questionnaire — Is the country fully self-governing? — seems to have been given rather perfunctory attention by both the Committee and the Assembly. The reports have usually consisted merely of a brief statement of the constitutional provisions, presumably intended to show that there exist no legal

¹ *Ibid.*, p. 587.

² *Ibid.*, p. 664.

³ *Ibid.*, II, 195.

⁴ *Ibid.*, I, 564.

impairments of sovereignty. Thus, in the case of Abyssinia, the report read:

With regard to the fourth question, the Sub-Committee has been informed that Abyssinia is governed by Her Majesty the Empress, assisted by the Crown Prince as Regent and Prime Minister and by a Council of Ministers. The Sub-Committee, although it found itself unable to determine exactly the extent of the effective control of the central authority over the provinces remote from the capital, is of opinion that Abyssinia is fully self-governed.¹

In connection with the application of the Dominican Republic shortly after the termination of the American occupation, the report to the Assembly stated: "The Dominican Republic is an independent and sovereign State. It was temporarily occupied by troops of the United States of America, but occupation came to an end on July 12th last."² In the case of Iraq, the findings of the Permanent Mandates Commission and the Council on this point were taken at their face value and the compatibility of the Treaty of Alliance with Great Britain and complete self-government was not questioned. A more rigorous test of complete self-government proposed in the first Assembly, although vigorously applauded at the time, has not been followed in the actual working of the League machinery. M. Viviani stated at that time:

We claim to represent that form of democracy which rejects the tyranny from above, from which, as you have reason to remember, we have suffered, but which at the same time rejects a tyranny equally base, the tyranny from below. We await the moment when the great people of Russia in fulfillment of their destiny, shall at length realize democratic principles and introduce universal suffrage, without which there is nothing save anarchy or despotism A nation desirous of entering here must have a free and responsible government; it must be a democracy; it must have a general organisation of such a kind that we can reasonably expect that, while she may apply to us for support, she will be able, should we ask it of her, to give us similar support. She must give adequate guarantees of the sincerity of her intention to fulfill her international obligations.³

The admission of Albania, Persia, Turkey, and Abyssinia are sufficient evidence that this interpretation has not been followed. In practice the criteria of self-government has been examined in its international rather than its internal aspect.

¹ *Ibid.*, 1923, p. 375.

² *Special Supplement*, No. 29, 1924, p. 24.

³ *Assembly Record*, 1920, I, 575-79.

In judging the conduct of a State with regard to its international obligations, the Assembly has placed greater emphasis on assurances than past record and has been generous in giving the benefit of a doubt to the petitioning State. In the case of Bulgaria it held that the State's pre-war record should not be held against it inasmuch as there had been a change of government and of spirit. Charge of a breach having been brought against Georgia, the Committee reported after investigation :

A case of disregard for the rights of foreigners in Georgia by the public authorities having been brought to the notice of the Commission, it was submitted to the Georgian delegates, who explained it as a case of misapplication of a general rule that in itself was not contrary to the principles in force concerning the status of foreigners in Georgia. The Committee accepted this view.¹

In the case of new States with little record of international relationships, formal assurances of their intention to conform have been accepted at face value, as in the cases of the Baltic States. Accession to the Pact of Paris has been cited as favourable evidence of intention. In the case of former enemy States suffering under special restrictions of the Peace Treaties, special attention has been given to the extent to which they have fulfilled their obligations thereunder, but absolute fulfillment has not been demanded if the intention to complete the operation is shown. In passing on the applicant's status with regard to the League's regulations concerning armament, the Assembly has accepted the decisions of the Permanent Advisory Commission on Armaments which has in each case been invited to render a judgment.

Following the example set in the Minorities Treaties, the League has consistently demanded of new States containing important minority elements that they should conform to the provisions of the Minorities Treaties. Speaking on this point in the plenary session of the 1920 Assembly, Lord Robert Cecil said :

As far back at any rate as 1878, at the Congress of Berlin, it was laid down that before any new State could be recognized by the comity of nations. . . . and before any existing State receive any considerable accession of territory, they were to enter into obligations to respect the linguistic, religious, and racial minorities in these States. . . . That principle was fully recognized at the recent Peace Conference. Obligations to protect minorities were agreed upon with the

¹ *Ibid.*, p. 641.

following States : Czecho-Slovakia, Serbia, Poland, Roumania, Greece, Armenia, and also Austria and Bulgaria.¹

He proceeded to move that:

In the event of Albania, the Baltic and Caucasian states being admitted into the League, the Assembly requests that they should take the necessary measures to enforce the principles of the Minorities Treaties, and that they should arrange with the Council the details required to carry this object into effect.²

In the case of Abyssinia, special guarantees were demanded with regard to the slave trade and the traffic in arms. The Abyssinian Government was requested to sign the following declaration:

The Empire of Abyssinia, following the example of other sovereign States which have given special undertakings on the occasion of their admission to the League of Nations, makes the following declaration:

1. Abyssinia adheres to the obligations formulated in Article II, paragraph 1, of the Convention signed at St. Germain-en-Laye on September 10, 1919, amending the General Act of Berlin dated February 26, 1885, and the General Act and Declaration of Brussels dated July 2nd, 1890.

2. Abyssinia, recognizing as binding the system at present established with regard to the importation of arms and ammunition, undertakes to conform to the principles set forth in the Convention and Protocol signed at St. Germain-en-Laye on September 10, 1919, and in particular to the stipulations contained in Article VI of the said Covenant.

3. Abyssinia declares herself ready now and hereafter to furnish the Council with any information which it may require, and to take into consideration any recommendations which the Council may make with regard to the fulfillment of these obligations, in which she recognises that the League of Nations is concerned.³

It should be noted that the more rigorous guarantees demanded of Iraq with regard to the protection of minorities, the economic system, judicial organization, international conventions, acquired rights and financial obligations, and freedom of conscience, were required by the Council in consenting to the termination of the mandatory regime and not by the Assembly as pre requisite to admission into the League.

Summing up, one finds the following criteria advanced by the

¹ *Ibid.*, p. 569.

² *Ibid.*, pp. 568-69.

³ *Ibid.*, 1923, p. 675.

League as to the qualifications for membership: recognition, stable government, full self-government, minority safeguards, and fulfillment of international obligations. In contrast with the standards set up by the Permanent Mandates Commission for the termination of a Mandate the League's criteria for admission to membership appear to be still more general in terminology and its investigation into the fulfillment of the criteria more superficial than the conscientious if incomplete examination of the Mandates Commission. While the war psychology still dominating the sessions of the first Assembly led to the rejection of a considerable number of applications for admission, since that time there have been few rejections. The desire for universality in the League's membership has encouraged a liberal interpretation of the requirements and the faith in the corrective and inspiring influence of League membership has led in the same direction. The findings of the Committee on Admissions has in general been accepted in the plenary sessions of the Assembly without debate, the representatives vying with each other in the eloquence of their speeches of welcome even before the vote on admission had been taken. Nevertheless, it is important to notice that in the borderline cases which really involved the question of capacity for independent existence, the record shows a more careful and detailed consideration of the evidence, as in the cases of Albania, Georgia, Armenia, Abyssinia, and the Baltic States. Additional importance is given to the findings of the League in this question of qualifications in view of the representative character of the Assembly and the unanimous assent to the criteria elaborated by its Committee as essential to membership in the League of Nations.

CHAPTER VII

CONCLUSIONS

Obviously the whole conception of objective criteria of capacity for independence is based upon a consideration of the State as an International Person. It views the State from the standpoint of International Law and Organization. For this approach, perhaps the best definition of the State is that of Pitamic who describes it in the following terms:

The state is a juridical organization of men which is (1) established on a certain territory, which is (2) subject directly to international law, but which has (3) authority over all juridical organizations on its territory save those which depend directly upon international law.¹

But Pitamic holds that

in order that the new organization be directly subject to international law, it is not essential that it be recognized by other states; it is only necessary that this organization itself recognize the authority of international law, and that means that it subordinates itself to this law.²

Advocates of the force and contract theories of the origin of the State likewise claim that the mere creation of a new *de facto* political entity through force or contract automatically creates a new International Person with all the rights and obligations attaching thereto. But this would be to make the new organization final judge in its own case and would place existing States, without their consent, under obligations to a constantly expanding group of States. Even Goebel, who denies the constitutive theory of recognition, asserts that the real juristic meaning of recognition "is that in so far as a third state is concerned, it will recognize to be binding upon itself those obligations which the new state has assumed."³ If such action is necessary before these obligations are binding upon third States, then full participation in the rights and obligations attending membership in the Family of Nations cannot be enjoyed

¹ LEONIDAS PITAMIC, *A Treatise on the State* (Baltimore, 1923), p. 27.

² *Ibid.*, pp. 30—31.

³ JULIUS GOEBEL, Jr., *The Recognition Policy of the United States* (New York, 1915), p. 61.

prior to such recognition. A State cannot become subject to International Law by its own unilateral action alone. It may accept the obligations of a State under International Law, but it cannot thereby acquire the rights of an International Person. The full benefit of subjection to International Law can only be acquired through the recognition of its new status by the States already members of the International Community. Thus, so far as its international status is concerned, the State originates through the process of recognition, and the problem is raised of determining the conditions under which recognition should be accorded and a new *de jure* State created thereby.¹

This problem may be raised under a variety of conditions. A revolting colony or dependency may declare its independence and seek recognition and admission to the Family of Nations, or it may through a peaceful evolutionary process reach an agreement with the parent State that its independent existence should be recognized and thereupon seek general recognition with the approval of the parent State. Similarly, a mandated territory may seek emancipation and the termination of the mandatory regime. A new *de facto* State may seek recognition through admission to membership in the League of Nations. In all these cases judgment must be rendered upon the question as to whether the new political entity actually constitutes a *de facto* State and is entitled to admission to the Family of Nations. The present study has attempted to analyse the conditions under which such recognition has been accorded in the hope of finding certain common principles which may be accepted as fundamental criteria of capacity for independence.

Before attempting a comparison of the criteria elaborated by

¹ "It is generally agreed that a new State before its recognition cannot claim any right which a member of the Family of Nations has towards other members. It can, therefore, not be seen what the function of recognition could be if a State entered with its birth really of right into the membership of the Family of Nations. There is no doubt that statehood itself is independent of recognition. International Law does not say that a State is not in existence as long as it is not recognized, but it takes no notice of it before its recognition. Through recognition only and exclusively a State becomes an International Person and a subject of International Law." (L. OPPENHEIM, *International Law* [London: Longmans, Green & Co., 1905], pp. 109—10.)

OPPENHEIM thus sees the significance of recognition as being a constitutive act whereby a new State in the sense of an International Person comes into being. GOEBEL, on the other hand, claims that the *de facto* State has legal capacity prior to recognition, and that the significance of the act of recognition is not the recognition of the status of the new State but the binding of the existing States with regard to this new political entity. He thus represents a point midway between the constitutive theory and the theory that recognition has no real significance but is a mere formality, practically necessary for intercourse between States, but theoretically not essential. Hall and Rivier represent the latter school of thought.

the Permanent Mandates Commission with those advanced in the various historical movements which have been examined, certain general conclusions may be drawn from this survey. Perhaps the most noteworthy feature is the remarkable degree of uniformity in the various sets of standards. Having their origins in the practice of recognition, the closer they conform to the general statement of that practice the more nearly do they gain general acceptance. The more these general categories are broken down and re-defined in terms of the various elements which are necessary to the realization of the whole, the more difficult it becomes to secure unanimous approval. However, the criteria stated under widely varying circumstances of race, geography, and historical background have been so markedly similar in broad general categories as to warrant the assumption that there are certain fundamental criteria of universal validity. The few exceptions to this general agreement have been so obviously based on political expediency that they only serve to prove the rule for they constitute exceptions even to the general practice of the States concerned.¹

The recognition of new States by individual members of the Family of Nations has seldom called for an elaborate analysis of the factors involved in the general criteria justifying recognition under International Law. The decision as to whether the new State could be recognized without violating the rights of the parent or other State under International Law was usually made on the basis of common sense judgments of official and unofficial observers and without carefully prepared objective evidence and statistical data. Even in those cases where the parent country was likely to charge premature recognition, the argument turned largely on the existence of a *de facto* government and the likelihood of its being able to maintain its independence as against the mother country.² However, the spread of democratic doctrine, the increasing strength of nationalist movements, and the doctrine of self-determination have forced imperialist governments to justify their retention of imperial authority in terms of native welfare and international harmony. Capacity becomes the password of political advance and finally gains its recognized place in the League Covenant as the justification of the Mandate System. Thus the imperial Powers, the League, and the aspiring nationalist groups are all vitally concerned in the determination of the criteria of capacity for independence. But the determination of capacity under modern conditions requires

¹ Examples: the United States in Panama, Japan in Manchoukuo.

² *Supra*, p. 106.

a more accurate yardstick and more conclusive evidence than formerly if it is to satisfy a more critical public opinion both at home and abroad. Snap judgments on the capacity of a subject people to maintain a stable government or fulfill their international obligations are no longer accepted either by public opinion at home or by the subject people concerned. They demand information as to the basis of such a judgment, as to the evidence advanced, and as to the factors considered in arriving at such a conclusion. Thus the imperial government is forced to interpret such broad criteria as stable government and capacity to fulfill international responsibilities and state them in terms of the factors considered necessary to their achievement.

At the same time the League is likewise forced to justify its decisions in terms of the principles laid down in the Covenant. The light of a pitiless publicity and the necessity of securing general international agreement requires a thoroughly rationalized argument in support of its conclusions. Thus, whether admitting new members to the League or passing on the termination of a mandatory regime, the appropriate League organs have found it necessary to elaborate the general criteria laid down by the Covenant. The remarkable thing is that, in spite of the different points of reference from which these independent conclusions have been made, there is so much in common between them. Differences between the criteria advanced in particular cases are usually due to varying degrees of precision in their statement, criteria listed separately in one instance being implied under a more general heading in another. The important difference is not as to the nature of the criteria to be applied but rather as to the degree of achievement to be required in terms of the criteria selected. The lack of satisfactory techniques and standards of measurement in this field makes agreement more difficult and particularly handicaps any objective appraisal of the degree of achievement represented by the actual facts of a given case. Thus, as is perhaps to be expected, the most violent disagreement occurs over questions of fact rather than of principle, the opposing parties each firmly convinced that its own subjective method of appraisal is the more dependable.

In judging as to the general validity of the criteria for the termination of a mandatory regime formulated by the Permanent Mandates Commission, it is possible to compare these criteria with those advanced in the course of the various historical developments of nationalist independence movements and see to what extent they represent a common standard.

The first criterion reads as follows: "It must have a settled government and an administration capable of maintaining the regular operation of essential government services."¹ The criterion of a settled government, or as more commonly stated a stable government, has been advanced in all the cases which have been examined. It has been held essential to justify the recognition of a new State under the normal requirements of International Law, necessary for admission to the League of Nations, and an absolute prerequisite to the granting of independence by the parent State to one of its dependencies. It is obviously the most important single criterion of a readiness for independent status and was, as previously indicated, the sole criterion set up in the case of the Philippines by the Preamble to the Jones Act. However, its very comprehensiveness makes it an unsatisfactory measuring stick, until it has been stated in terms of its constituent elements, as was amply demonstrated by the long struggle between the parties in America over the interpretation of this criterion.

This defect is promptly remedied by the Mandates Commission by the remaining criteria in the list which are all attributes of a stable government. As evidence of the existence of a stable government the Commission suggests "an administration capable of maintaining the regular operation of essential Government services"; capacity to maintain "its territorial integrity and political independence"; capacity "to maintain the public peace throughout the whole area"; the existence of "adequate financial resources to provide regularly for normal Government requirements"; and "laws and a judicial organization which will afford equal and regular justice to all."² No new criteria are elaborated here; in fact, this statement might easily pass for a summary of the points in General Grant's pronouncement on Cuban recognition in 1875³ or of Great Britain's argument as to the capacity of Iraq.⁴

Several problems of interpretation and definition are raised by these criteria but are not explained in the formal statement of the Commission. However, the Commission's attitude may be deduced from its discussion and recommendations on the termination of the mandatory regime in Iraq. First, as to what constitute "essential government services," one finds the Commission particularly interested in the status of the following services of the Iraqi Government: Defense and Police, Justice, Finance, Health and Sanitation,

¹ *Supra*, p. 6.

² *Supra*, p. 6.

³ *Supra*, p. 107.

⁴ *Supra*, pp. 22-30.

Education, Communications and Public Works, and Commerce, Industry, and Agriculture. In the recognition of new States, the nations seem to have been principally concerned with the first three categories of Public Security, Justice, and Finance. While the remaining categories are perhaps less directly involved in the maintenance of a stable government, they are becoming increasingly important "under the strenuous conditions of the modern world" and are likewise more and more essential to the fulfillment of the international obligations involved in membership in the League,¹ in the International Labor Office, and the various International Unions. Nor have the subject peoples themselves been slow to point to their record in the administration of these services as evidence of their capacity for self-government. Further evidence of the primary importance of the first three services is furnished by the fact that these services are specifically cited in the formal list of criteria, while the others are merely implied in the first criterion. Thus the services of Defense and Public Security, of Justice, and of Finance may be considered absolute criteria of capacity for independence, the other services constituting important supplementary evidence whose importance may vary under different circumstances.

The second criterion of capacity to maintain the territorial integrity and political independence of the State obviously cannot be interpreted in any absolute sense. In the first place, the most powerful nation could not successfully defend itself against a coalition of its enemies; certainly the smaller nations could not successfully defend themselves against the aggression of any of the Great Powers. Thus a nation's ability to maintain its independence will depend not merely on its potential military power, but also upon its ability to maintain harmonious relations with its neighbors, to conduct its international relations in such a way as to insure it the advantages of such international guarantees as are embodied in the League of Nations Covenant or the Pact of Paris or bi-lateral agreements in the form of military alliances. The Mandatory Government insisted, and the Permanent Mandates Commission agreed in the case of Iraq, that this criterion of defense was not inconsistent with a reliance upon such international guarantees². The actual military requirements in any given case will obviously depend upon the circumstances and cannot be stated in absolute terms. Thus the small State of Luxemburg, surrounded by powerful neighbors, is practically dependent upon diplomacy for the maintenance of its independent status, while

¹ Particularly Article 23 of the League Covenant.

² *Supra*, p. 33.

the State of Iraq, with an extensive frontier bordering lands inhabited by semi-civilized nomadic tribes is forced to maintain a military force capable of defending its borders against sudden raids. The importance of defense has been clearly recognized in all the different situations in which the question of capacity for independence has arisen, whether in recognition, admission to the League, termination of a mandatory regime, or the voluntary granting of independence by a parent State, but, as is to be expected, the degree of capacity required in this respect has varied with the circumstances of the new State and the degree of confidence in the value of international guarantees.

The third criterion of the Commission, the capacity to maintain public order, is perhaps the most universally recognized of all, and clearly essential to the maintenance of stable government. Here again the standard is an admittedly relative one for differences in geography, in race, in social and religious customs, and in the degree of homogeneity of the population make any absolute standard impossible. This was clearly recognized in the Commission's discussion of the problem in Iraq and was implied in the reference to the doubtful extent of government control in Abyssinia in the report of the Sixth Committee of the Assembly.¹ Acceptance of the relative nature of this criterion is further evidenced by the varying extent of public authority in the different South American States and the post-war States of Europe at the time of their recognition by the various members of the Family of Nations.

The history of recognition policy would show the principal concern in reference to the finances of new States to have been in connection with the fulfillment of international obligations, rather than with the ability to maintain normal government services. However, the danger of international complications arising out of heavy foreign borrowing has been clearly indicated in the history of Turkey, Egypt, and various South American States. The development of the Drago Doctrine was a recognition that financial dependence on foreign creditors might constitute a threat to territorial integrity and political independence. Post-war developments with the tangle of war debts and reparations has further emphasized the importance of a sound financial base for a really independent existence. The inclusion of finance among the reserved subjects in India, the long debate in the American Congress on the probable effect of independence upon Philippine finances, and the emphasis in the Mandate Commission hearings on Iraq on the balanced budget, the Ottoman debt payments, and the oil royalties all show

¹ *Supra*, p. 116.

the importance attached to this question in the light of "the strenuous conditions of modern life." Where in the past the satisfaction of this criterion has been assumed to be evidenced by the fulfillment of a State's international obligations and the requirements of a stable government, the present tendency seems to be in the direction of a more rigid examination of the financial resources of a new State.

As to the last criterion in the Mandates Commission list, one need only point to the Capitulations in the former Turkish Empire and in China to indicate the importance which has always been accorded to the existence of "a judicial organization which will afford equal and regular justice to all." Two problems have arisen in this connection, the one where the religious basis of the main body of law has rendered it inapplicable to minority groups of a different faith and to foreigners, especially as to personal status; the other, where inadequate or corrupt administration of the law has failed to accord justice even in terms of existing law. The capitulatory regime was aimed at both those defects. The promulgation of Civil and Criminal Codes and the codification of the laws with the deletion of obsolete provisions, together with the provision for the jurisdiction of special communal tribunals in matters of personal status, was considered by the Mandates Commission to have remedied the situation in Iraq so far as the system of law was concerned, while the provision for foreign judges in the judicial organization for a period of at least ten years was held to be a sufficient guarantee of the impartial administration of justice. There can be no doubt of the importance of a high standard in the administration of justice as a criterion of capacity for independence because of the likelihood of international complications arising from a miscarriage of justice, real or alleged, involving foreigners. It is perhaps not amiss to suggest that there may have been cases in countries with an allegedly inferior judicial system where the foreign status of a litigant has been an asset rather than a liability, due in part to the reluctance to create an "incident" and in part to the "prestige" enjoyed by foreigners in the so-called "backward" countries. While undoubtedly a valid criterion of capacity, judging from the extent of common acceptance as such, it is peculiarly susceptible to subjective judgment in application and the remedies are likely to strengthen racial antagonism and embarrass international relationships, possibly even more than a few minor cases of miscarriage of justice.

The objects for which guarantees are demanded of the prospective State really constitute additional criteria of capacity

which have been stated in a different form owing to their reference to the future conduct of the petitioning nation. Stated as criteria of capacity, they might have been worded as follows: The new State must evidence an intention to insure and a willingness to guarantee the effective protection of racial, linguistic, and religious minorities; etc. The obvious and simplest way of proving the fulfillment of this criterion would be to offer the guarantees demanded by the Commission.

The first guarantee as to the status of minorities imposes a condition which has received general approval and acceptance since the Congress of Berlin in 1878, and was consistently exacted from the new post-war States of Eastern Europe¹. The safeguarding of minorities was one of the factors examined by the League Committee on Admissions and was generally recognized by the imperial States as one of the important problems involved in the evolution of their dependencies toward independent status. Its importance was likewise recognized by the natives of such dependencies, at least by the leaders therein. Its general acceptance as a valid criterion of capacity is further indicated by its inclusion in the Covenant of the League and the various Minorities Treaties.

The second guarantee demanded concerning "the privileges and immunities of foreigners (in the Near Eastern territories)" cannot be accepted as of universal validity. This is obvious on its face from its limitation to the Near East and from the provision appended "unless any other arrangement on this subject has been previously approved by the Council in concert with the Powers concerned." There can scarcely be any justification for requiring special privileges and immunities for foreigners in a State which has evidenced its capacity for independence in terms of the criteria set up by the Mandates Commission and the Council. The reason for the inclusion of such a guarantee by the Commission lay in the necessity for complying with the express provisions of the mandates for Syria and Palestine which provided that the capitulations shall be "immediately re-established" upon the termination of the mandatory regime.² That the Commission itself recognized the inconsistency of such a requirement is indicated by its recommendation for the acceptance of the Judicial Agreement in Iraq in place of a return to the capitulatory regime.³

The third guarantee as to "the interests of foreigners in judicial, civil, and criminal cases, in so far as these are not guaranteed

¹ *Supra*, pp. 110 and 117-18.

² Article 5 of the Syrian Mandate; Article 8 in the Mandate for Palestine.

³ *Permanent Mandates Commission, Minutes*, XXI, 168-69.

by the capitulations" would seem to indicate some doubt as to the sufficiency of the criterion concerning the laws and judicial organization. Considered merely as a re-statement of this criterion, its validity as a measure of capacity seems generally accepted, but it should be unnecessary if the fulfillment of the earlier form of the criterion can be satisfactorily determined and its seeming assumption of bad faith on the part of the prospective State would seem to make it politically inexpedient.

The same criticism applies to the fourth guarantee which relates to

freedom of conscience and public worship and the free exercise of the religious, educational, and medical activities of religious missions of all denominations, subject to such measures as may be indispensable for the maintenance of public order, morality and effective administration.

These objects would seem to be assured by the provisions of the criteria on judicial administration and also by the provisions of the guarantee of the rights of minorities. However, the Commission intended this clause to provide for the case of the individual rather than a minority group and also to cover the special case of foreign missions. This provision merely confirms a condition which has been generally accepted and provided for in the treaty relations with new States, although not usually advanced as a prerequisite for independence.

The next two clauses have the common object of preventing any policy of repudiation or confiscatory legislation which would threaten "the financial obligations regularly assumed by the former mandatory Power" or the "rights of every kind legally acquired under the mandate regime." This provision is in accordance with the terms of the Council's Resolution of September 15, 1925,¹ which was intended to protect the Mandatory Powers and encourage the development of the mandated areas. This guarantee would seem to be more necessary to the successful working of the mandatory regime than to the demonstration of a capacity for self-government. However, for the mandated areas these provisions would seem to take the place of the principles embodied in the International law of Succession which might be considered inapplicable since the Mandatory Power, who creates the obligations and rights, does not possess sovereignty with respect to the mandated area. It likewise safeguards the League, whose ultimate responsibility is generally

¹ League of Nations, *Official Journal, Minutes of the Council*, VI, 510.

conceded.¹ The same observations apply to the concluding provision for the maintenance in force for their respective duration and subject to the right of denunciation by the parties concerned of the international conventions, both general and special, to which, during the mandate, the mandatory Power acceded on behalf of the mandated territory.

Finally, the Mandates Commission

considers that it would be desirable that the new State, if hitherto subject to the Economic Equality Clause, should consent to secure to all States Members of the League of Nations the most-favored-nation treatment as a transitory measure on condition of reciprocity.

That this cannot be considered a universally valid criterion is clearly indicated by its limitation to those States "hitherto subject to the Economic Equality Clause." While precedent for this provision may be found in the case of China, it constitutes the exception rather than the rule. As a definite limitation of sovereignty it can scarcely be supported as a criterion of the capacity to exercise sovereignty. Advanced by the Mandates Commission in the alleged interests of peace and international harmony, it is of doubtful validity even on those grounds at a time when the whole world seems to be placing new emphasis on the value of a national economy.

With the exception of the guarantee of the capitulatory regime and the most-favored-nation clause, the criteria advanced by the Permanent Mandates Commission and accepted by the Council are seen to have been generally advanced in the discussion and determination of independence movements throughout the world. Two criteria which have been commonly advanced are, however, singularly lacking from the Commission's list, although both of them have been clearly indicated in the debate of the Commission and are, perhaps, considered to be implied by the criteria listed. The first of these is the necessity that the new State shall rest upon popular approval and support, regardless of the particular form of governmental organization which may be adopted. The Commission may have considered that the introductory paragraph of its report on the criteria of capacity recognized this factor,² and that it was implied as an essential factor in the maintenance of a stable government. In view of the importance attributed to this factor in the history of diplomatic recognition and in the debates

¹ Q. Wright, *Mandates under the League of Nations* (Chicago: University of Chicago Press, 1930), pp. 512-16.

² *Supra*, pp. 5-6.

on the leading independence movements in recent history, not to mention the influence of the doctrine of self-determination in the history of the post-war period, it would seem desirable to include this requirement as one of the criteria of a capacity for independence.

The second factor is the ability and intention to fulfill the obligations and responsibilities involved in admission to the Community of Nations. One of the most obvious considerations in every case of the recognition of a new State or Government, consistently advanced by the League Committee in reporting on prospective members, and a more comprehensive and fundamental provision than the limited guarantees demanded by the Commission, it is remarkable indeed that the Commission should not have made specific reference thereto. In fact, this criterion would seem to be one of the two most fundamental standards which have been advanced, namely, the existence of a stable government and an intention to fulfill all international obligations, the other factors listed being different attributes of these fundamental criteria.

The findings of the Commission are likewise in harmony with general practice in rejecting certain factors which have sometimes been advanced as criteria of capacity but which have failed to win general acceptance.

Thus, the early restriction of the Family of Nations to the Christian European nations, long a characteristic of the international community, no longer applies, but nations of every variety of religious, racial, and social background have come together under the common bond of International Law. As Hershey puts it, "From the standpoint of the Law of Nations, the *main test of civilization is to be found in the quality of the existing Government.*"¹ It suffices that the various peoples have a common conception of the functions of government and of their rights and obligations under International Law. A particular type of civilization or religious faith has lost its place as a valid criterion of capacity for independence.

The earlier insistence on a particular form of government has likewise been superseded. The legitimist theory of recognition long insisted on the monarchic principle while in more recent time a new legitimist theory has attempted to establish the democratic principle in its place. The Continental Powers lost out in their attempt to impose the monarchic principle on the revolting Spanish Colonies in South America and in spite of lip-service in the League Assembly to the democratic dogma, republics, monarchies, and

¹ A. S. HERSHEY, *International Law and Organization* (New York: Macmillan Co., 1927), p. 166.

dictatorships are all represented in the League's membership. So long as a stable government exists, no one form has proved essential to independent status in the Family of Nations,

Plato and Aristotle to the contrary notwithstanding, the size of the population and territory of a State has likewise passed into the discard as a criterion of readiness for self-government. With membership in the League of Nations embracing such extremes as China and Luxemburg, it is clearly impossible to generalize any rule based on size. While the ancient writers were concerned as to the maximum size of the State, modern writers are more concerned as to a possible minimum, but in rejecting the application of Liechtenstein for admission to the League, the Assembly made it clear that size, *per se*, was not the basis of rejection,¹ and this position is supported by the international practice of recognition as well as in the conclusions of the Permanent Mandates Commission which make no reference to this factor.

The requirement of economic self-sufficiency, so commonly advocated in the discussion of the Philippine independence question, failed to win acceptance as being essential to independent status. In fact, surprisingly little attention has been devoted to the general economic conditions of states aspiring to recognition. Neither in the practice of recognition, the admission of new states to the League, nor the termination of a mandatory regime has the consideration of economic capacity gone beyond an examination into the financial resources of the government in relation to its obligations.

In matters of defense, the acceptance of the principle that the guarantees of the League Covenant and military alliances may be relied upon for the protection of the territorial integrity and political independence of a State has largely vitiated the criterion of force. However, it should be noted that this interpretation was not intended to imply that no power of defense was necessary. As was clearly brought out in the case of Iraq, it was expected that Iraq should be able to defend its frontiers from any ordinary threat, but that it could not be expected to defend itself unaided against the deliberate aggression of a powerful neighbor. As is the case in the application of all the criteria, that of defense is to be interpreted in relative terms.

The result of this survey indicates that the following criteria have met the test of common acceptance and may be considered valid tests of a capacity for independence:

¹ *Supra*, p. 113-14.

- A. The existence of a stable government as evidenced by:
1. An administration capable of maintaining the regular operation of essential government services;
 2. Capacity to maintain the territorial integrity and political independence of the State;
 3. The maintenance of public order and security throughout the whole territory;
 4. Adequate financial resources to provide regularly for normal government requirements;
 5. Laws and a judicial organization which will afford equal and regular justice to all;
 6. A united public opinion supporting the demand for independent status.
- B. The existence of a clear intention to fulfill the international responsibilities and obligations pertaining to membership in the Family of Nations, including:
1. The effective protection of racial, linguistic, and religious minorities;
 2. The effective protection of foreigners in judicial, civil, and criminal cases;
 3. Freedom of conscience and public worship and the free exercise of the religious, educational, and medical activities of religious missions of all denominations, subject to such measures as may be indispensable for the maintenance of public order, morality, and effective administration;
 4. The financial obligations regularly assumed for the benefit of the territory¹ by the former administration; and.
 5. The rights of every kind legally acquired under the former administration.

If one considers only those criteria which have received sufficiently general approval to eventuate in formal expressions of government policy, one finds practical unanimity in the standards advanced as tests of capacity for independence. The radical differences of opinion, which at first glance seemed to jeopardize the chances of any general agreement, were found on closer analysis to relate to a different aspect of the problem, namely the standard

¹ The qualification that the obligations must have been assumed for the benefit of the territory is implied in the very spirit of Article 22 of the Covenant for the Mandatory regime and was vigorously asserted by the United States in connection with Cuban and Philippine debt settlements after the Spanish-American War. See J. B. MOORE, *International Law Digest* (Washington: Government Printing Office, 1906), I, 351-81.

of measurement involved, or to result from individual expressions of opinion which did not reflect the dominant opinion of any group. An examination of individual national policies as revealed in the recognition of new States and in the relations of sovereign States with their dependencies, as well as the collective judgment of the nations expressed through international conferences, congresses, and institutions has revealed no serious challenge to the general validity of the criteria formulated above. Likewise, an examination of typical independence movements has shown the leaders, while often claiming an absolute right of self-determination for tactical purposes, to have acknowledged the validity of these criteria, as is shown by their concentration on these very factors and their willingness to offer the required guarantees. Thus the Iraqis quickly accepted the conditions imposed by the League Assembly and discarded the plea of an unconditional right of self-determination, while the Indian delegates to the Round Table Conference found ample evidence of the essential nature of unity and minority safeguards in their own inability to agree among themselves, and in spite of their alleged competence in terms of the other criteria they could not formulate a constitution which could overcome the handicaps of a lack of unity and dissatisfied minorities.

The recognition of Manchoukuo by Japan may be considered as a denial of the criteria if judged on the basis of the Lytton Commission Report as to the facts, in which case it would seem to constitute an exception to the rule in Japanese diplomatic history similar to the exception in American history represented by the recognition of Panama. On the other hand, if one examines the arguments of Japan and Manchoukuo as to the facts of the situation, one may conclude that both these nations have fully accepted the criteria of capacity and have acted in accordance therewith. Thus the cablegram dispatched by the Manchoukuo Government requesting recognition by the various nations of the world contained the following significant assurances:

1. That the Government will conduct the affairs of the State according to the primary principle of faith and confidence and the spirit of harmony and friendship, and pledge itself to maintain and promote international peace.
2. That the Government will respect international justice in accordance with the international laws and conventions.
3. That the Government will succeed to the obligations of the Republic of China by virtue of treaty stipulations with foreign countries, in the light of international laws and

conventions, and that these obligations shall be faithfully discharged.

4. That the Government will not infringe upon the acquired rights of the peoples of foreign countries within the limits of the State of Manchuria, and, further, that their persons and properties shall be given full protection.

5. That the Government will welcome the entry of the nationals of foreign countries and their residence in Manchuria, and that all races shall be accorded equal and equitable treatment.

6. That trade and commerce with foreign countries shall be facilitated so as to contribute to the development of world economy.

7. That, with regard to the economic activities of the peoples of foreign nations within the State of Manchuria, the principle of the Open Door shall be observed.¹

There would seem to be little more required in the way of guarantees of an intention to fulfill the State's international obligations in terms of Criteria B and its various sub-heads in the revised list. Turning to the evidence as to the existence of a stable government, one finds that the Lytton Commission has itself listed the various services organized by the new government including those of Police, Finance, Justice, Health, Education, Communications, and Customs. While the Commission's opinion as to the sufficiency of these services and as to their stability differs from that of Manchoukuo and Japanese officialdom, it nevertheless supports their contention that these services have been organized. That the new State evolved from an essentially popular separatist movement has been consistently maintained by Japan and is formally asserted in the Protocol of September 15, 1932, by which Japan recognized Manchoukuo. The Protocol reads in part:

Whereas Japan has recognized the fact that Manchoukuo, in accordance with the free will of its inhabitants, has organized and established itself as an independent State; and

Whereas Manchoukuo has declared its intention of abiding by all international engagements entered into by China in so far as they are applicable to Manchoukuo;

Now the Governments of Japan and Manchoukuo have, for the purpose of establishing a perpetual relationship of good neighborhood between Japan and Manchoukuo, each respecting the territorial rights of the other, and also in order to secure the peace of the Far East, agreed as follows:

1. Manchoukuo shall confirm and respect, in so far as no agreement to the contrary shall be made between Japan and

¹ K. K. KAWAKAMI, *Manchoukuo, Child of Conflict* (New York: Macmillan Co., 1933), p. 185.

Manchoukuo in the future, all rights and interests possessed by Japan or her subjects within the territory of Manchoukuo by virtue of Sino-Japanese treaties, agreements or other arrangements or of Sino-Japanese contracts, private as well as public;

2. Japan and Manchoukuo, recognizing that any threat to the territory or to the peace and order of either of the High Contracting Parties constitutes at the same time a threat to the safety and existence of the other, agree to cooperate in the maintenance of their national security; it being understood that such Japanese forces as may be necessary for this purpose shall be stationed in Manchoukuo.¹

Assuming the sincerity of the Japanese contentions, regardless of the correctness of it, it may well be claimed that Japan's recognition of Manchoukuo constitutes not a denial but an affirmation of the principles embodied in the criteria of capacity. In any case, the fact that the Japanese representatives on the Mandates Commission and on the Council approved of the criteria adopted by the Commission, and the fact that in the Manchurian question, Japan has carefully claimed the fulfillment of these criteria, would seem to indicate her acceptance of the criteria in principle whatever doubtful application of them has been made in this instance.

The Manchurian situation has at least served to drive home the fact that, as indicated in the opening chapter, the determination of the criteria of a capacity for independence is only a partial solution of the problem involved in ascertaining when such capacity is shown. The problem of measurement becomes the center of controversy, particularly in the appraisal of those "*de facto* conditions" enumerated in the first section of the Mandates Commission's criteria and under Criteria A of the revised list. Until specialists in each of the fields represented by the various criteria can develop more objective methods, preferably quantitative, for measuring the degree of achievement and efficiency represented by the facts of a given case, decisions can only be reached on the basis of a subjective common sense judgment which, from its very nature, cannot be conclusive and leaves the way open for perpetual intrigue and strategy in the hope of changing the subjective elements which determined the conclusions reached.

In the meantime, the important contributions of the Permanent Mandates Commission in formulating a set of criteria which, with slight modifications, have stood the test of securing practically universal approval should be of real value in improving the standards of mandatory administration and supervision. Most important

¹ *Ibid.*, pp. 187—88.

of all, it should help to dissipate the suspicion and distrust with which the mandated peoples have regarded the mandatory regime by making the goal toward which they must direct their efforts more definite. If the Mandates Commission can go one step further and develop reliable and objective methods for measuring the conditions required by these criteria, it is not too much to hope that a really harmonious cooperative relationship might be created as between the Mandatory and its wards instead of the existing atmosphere of antagonism and distrust.

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